रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

सत्यमेव जयते

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 19] नई दिल्ली, मई 4—मई 10, 2014, शनिवार/वैशाख 14—वैशाख 20, 1936
No. 19] NEW DELHI, MAY 4—MAY 10, 2014, SATURDAY/VAISAKHA 14—VAISAKHA 20, 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 अप्रैल, 2014

का.आ. 1340.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश राज्य सरकार, गृह विभाग, शिमला-2 के दिनांक 1 सितंबर, 2010 आदेश संख्या होम (ए) एफ (9)-4/2010 द्वारा प्राप्त सहमति से भगत सहकारिता बैंक, सोलन, हिमाचल प्रदेश द्वारा अनियमित निवेश संबंधी सौदों तथा उपर्युक्त अपराधों के संबंध में प्रयास, दुष्प्रेरणा और षडयंत्र किए जाने के संबंध में महाप्रबंधक, रिजर्व बैंक ऑफ इंडिया, अर्बन कोऑपरेटिव बैंकस डिपार्टमेंट, मुंबई द्वारा भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-ख, 409 तथा 420 तहत दिनांक 15-12-2009 की शिकायत की जांच हेतु दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार संपूर्ण हिमाचल प्रदेश राज्य पर करती है ।

[सं. 228/76/2013-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 28th April, 2014

S.O. 1340.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Himachal Pradesh, Department of Home, Shimla- 2 vide Order No. Home (A)F(9)-4/2010 dated 1st September, 2010, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Himachal Pradesh for investigation of complaint dated 15.12.2009 under sections 120-B, 409 and 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) made by the General Manager, Reserve Bank of India, Urban Cooperative Banks Department, Mumbai relating to irregular investment transactions by Bhagat Cooperative bank, Solan, Himachal Pradesh and attempts, abetments and conspiracies in relation to the above mentioned offences.

[No. 228/76/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 अप्रैल, 2014

का.आ. 1341.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, वित्तीय सेवाएं विभाग, वित्त मंत्रालय के सचिव श्री गुरदयाल सिंह संधु को तत्काल प्रभाव से और अगले आदेशों तक, श्री राजीव टकरू के स्थान पर भारतीय स्टेट बैंक के केन्द्रीय निदेशक मंडल में निदेशक के रूप में नामित करती है ।

[फा. सं. 7/2/2012-बीओ-I]

मिहिर कुमार, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st April, 2014

S.O. 1341.—In exercise of the powers conferred by clause (e) of Section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government hereby nominates Shri Gurdial Singh Sandhu, Secretary, Department of Financial Services, Ministry of Finance, to be a Director on the Central Board of Directors of State Bank of India with immediate effect and until further orders vice Shri Rajiv Takru.

[F. No. 7/2/2012-BO-I]

MIHIR KUMAR, Director

नई दिल्ली, 1 अप्रैल, 2014

का.आ. 1342.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, वित्तीय सेवाएं विभाग, वित्त मंत्रालय के सचिव श्री गुरदयाल सिंह संधु को तत्काल प्रभाव से और अगले आदेशों तक, श्री राजीव टकरू के स्थान पर भारतीय रिजर्व बैंक के केन्द्रीय निदेशक मंडल में निदेशक के रूप में नामित करती है ।

[फा. सं. 7/2/2012-बीओ-I]

मिहिर कुमार, निदेशक

New Delhi, the 1st April, 2014

S.O. 1342.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934, the Central Government hereby nominates Shri Gurdial Singh Sandhu, Secretary, Department of Financial Services, Ministry of Finance, to be a Director on the Central Board of Directors of Reserve Bank of India with immediate effect and until further orders vice Shri Rajiv Takru.

[F. No. 7/2/2012-BO-I]

MIHIR KUMAR, Director

नई दिल्ली, 3 अप्रैल, 2014

का.आ. 1343.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (4) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय रिजर्व बैंक के कार्यपालक निदेशक श्री आर. गांधी (जन्म तिथि : 4-4-1956) को उनके द्वारा पद का कार्य-भार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक में डिप्टी गवर्नर के पद पर नियुक्त करती है ।

[फा. सं. 1/6/2013-बीओ-I]

मिहिर कुमार, निदेशक

New Delhi, the 3rd April, 2014

S.O. 1343.—In exercise of the powers conferred by clause (a) of sub-section (1) read with sub-section (4) of Section 8 of the Reserve Bank of India Act, 1934, the Central Government hereby appoints Shri R. Gandhi (DoB : 04.04.1956), Executive Director, Reserve Bank of India as Deputy Governor, Reserve Bank of India for a period of three years from the date of his taking over charge of the post or until further orders, whichever is earlier.

[F. No. 1/6/2013-BO-I]

MIHIR KUMAR, Director

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1344.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों को उक्त सारणी के कालम (3) में विनिर्दिष्ट व्यक्तियों के स्थान पर कालम (1) में विनिर्दिष्ट बैंकों में सरकार द्वारा नामित निदेशक के रूप में तत्काल प्रभाव से और अगले आदेश होने तक, नामित करती है:-

(1)	(2)	(3)
1. ओरियंटल बैंक आफ कामर्स	श्री रजत सच्चर, आर्थिक सलाहकार, वित्तीय सेवाएं विभाग	श्रीमति श्रेया गुहा
2. देना बैंक	सुश्री एना रॉय, निदेशक, वित्तीय सेवाएं विभाग	श्री रजत सच्चर
3. कार्पोरेशन बैंक	श्री मनीष गुप्ता, निदेशक, वित्तीय सेवाएं विभाग	सुश्री एना रॉय

[फा. सं. 6/3/2012-बीओ-I]

मिहिर कुमार, निदेशक

New Delhi, the 16th April, 2014

S.O. 1344.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the persons specified in column (2) of the table below as Government Nominee Director of the Bank specified in column (1) thereof, in place of the persons specified in column (3) of the said Table, with immediate effect and until further orders:-

	(1)	(2)	(3)
1.	Orental Bank of Commerce	Shri Rajat Sachar, Economic Adviser Department of Financial Services	Smt. Sreya Guha
2.	Dena Bank	Ms. Anna Roy, Director, Department of Financial Services	Shri Rajat Sachar
3.	Corporation Bank	Shri Manish Gupta, Director, Department of Financial Services	Ms. Anna Roy

[F. No. 6/3/2012-BO-I]

MIHIR KUMAR, Director

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 28 अप्रैल, 2014

का.आ. 1345.—जबकि भारतीय चिकित्सा परिषद; संशोधन अध्यादेश, 2013 की धारा 3क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 06 नवंबर, 2013 को भारतीय चिकित्सा परिषद का पुनर्गठन किया गया:

और जबकि केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खंड (ख) के अनुसरण में और संबंधित विश्वविद्यालयों/स्वास्थ्य विज्ञान विश्वविद्यालयों द्वारा यथा सूचित, निम्नलिखित व्यक्ति को इस अधिसूचना के जारी होने की तिथि से चार वर्षों के लिए भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में निर्वाचित किया गया है।

अत: अब उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में केन्द्र सरकार द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित संशोधन किए जाते हैं; अर्थात :-

भारत सरकार, स्वास्थ्य एवं परिवार कल्याण मंत्रालय की दिनांक 06 नवंबर, 2013 की अधिसूचना संख्या का.आ. 3325 (अ) और उसके संशोधन में अंतिम प्रविष्टि तथा तत्संबंधी प्रविष्टि में निम्नलिखित को जोड़ा जाएगा, अर्थात् :

क्र.सं.	विश्वविद्यालय का नाम	निर्वाचित सदस्य का विवरण	चुनाव का तरीका
37.	शारदा विश्वविद्यालय,	प्रो. प्यारे लाल करिहोलू, प्रोफेसर ऑफ़ सर्जरी एवं चिकित्सा अधीक्षक, स्कूल ऑफ़ मेडिकल साइंसेज एवं रिसर्च, शारदा विश्वविद्यालय, ग्रेटर नोएडा	कोर्ट द्वारा निर्वाचित

[सं. वी. 11013/7/2013-एम ई पी-I]

अमित विश्वास, अवर सचिव

पाद टिप्पणी: दिनांक 9 जनवरी, 1960 के सा.का. 138 के तहत भारत के राजपत्र में मुख्य अधिसूचना प्रकाशित की गई थी और भारतीय आयुर्विज्ञान परिषद (संशोधन), द्वितीय अध्यादेश, 2013 (2013 का 11) के तहत अंतिम बार संशोधित किया गया था।

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 28th April, 2014

S.O. 1345.—Whereas on 06th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And Whereas the Central Government, in pursuance of clause (b) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and as informed by the respective universities/health science universities, the following have been elected to be a member of the Medical Council of India for four years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely:

In the notification of the Government of India in the Ministry of Health & Family Welfare number S.O. 3325(E) dated the 06th November, 2013 and amendments thereto, after the last entry and entry relating thereto, the following shall be inserted, namely:

S.No.	Name of the University	Details of the Elected Member	Mode of Election
37.	Sharda University, Grater Noida (UP)	Prof. Piaray Lal Kariholu, Professor of Surgery & Medical Superintendent, School of Medical Sciences & Research, Sharda Universtiy, Greater Noida	Elected by Court

[No. V. 11013/7/2013-MEP-I]

AMIT BISWAS, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 2 मई, 2014

का.आ. 1346.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अभिप्राप्त होने की संभावना है;

और रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/452 तारीख 23 दिसम्बर, 2013 का जिसमें उक्त अनुसूची में वर्णित भूमि क्षेत्र के ब्यौरे अन्तर्विष्ट है, निरीक्षण कलेक्टर, जिला शहडोल (मध्यप्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

अत: अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने का अपने आशय की सूचना देती है;

उपरोक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) से-

(i) उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से हुई या सम्भवत: होने वाली किसी क्षति के लिये उक्त अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उपधारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने की बाबत या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिये प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिये पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टो और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची

कंचनपुर ब्लाक, सोहागपुर क्षेत्र,

जिला-शहडोल (मध्यप्रदेश)

[रेखांक संख्या-एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/452, तारीख 23 दिसम्बर, 2013]

(पूर्वेक्षण के लिए अधिसूचित भूमि दर्शाते हुए)

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्या	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	कंचन पुर	67	168	सोहागपुर	शहडोल	775.000	भाग
2.	रायपुर	68	889	सोहागपुर	शहडोल	215.000	भाग
3.	उधिया	66	44	सोहागपुर	शहडोल	510.998	पूर्ण
				कुल : 1500.998 हेक्टर (लगभग) या 3709.04 एकड़ (लगभग)			

सीमा वर्णन:

क-ख रेखा ग्राम कंचनपुर-नरगी के सम्मिलित सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम कंचनपुर-नरगी, उधिया-नरगी, उधिया-पडरिया, उधिया-धनपुरा, उधिया-धनपुरी के सम्मिलित सीमा से गुजरती हुई बिन्दु 'ख' पर मिलती है।

ख-ग रेखा बिन्दु 'ख' से आरंभ होती है और ग्राम उधिया-छाता, कंचनपुर-छाता, कंचनपुर-लालपुर के सम्मिलित सीमा से होती हुई बिन्दु 'ग' पर मिलती है।

ग-घ रेखा बिन्दु 'ग' से आरंभ होती है और ग्राम कंचनपुर, रायपुर के उत्तरी भाग से होती हुई बिन्दु 'घ' पर मिलती है।

घ-क रेखा बिन्दु 'घ' से आरंभ होती है और ग्राम रायपुर के मध्य भाग से होती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/01/2014-पीआरआईडब्ल्यू-I]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

New Delhi, the 2nd May, 2014

S.O. 1346.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule annexed hereto;

And Whereas, the plan bearing number SECL/BSP/GM (PLG)/LAND/452 dated 23rd December, 2013 containing the details of the area of land described in the said Schedule may be inspected at the office of the Collector, District Shahdol (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid schedule;

Any person interested in the said Schedule may---

(i) Claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section 3 of section 4 thereof; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act, in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the schedule mentioned land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Officer-In-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattishgarh) within a period of ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Kanchanpur Block, Sohagpur Area,
District-Shahdol, Madhya Pradesh

[Plan bearing number SECL/BSP/GM (PLG)/LAND/452, dated 23rd December, 2013]

(Showing the land notified for prospecting).

Sl. No.	Name of Village	Patwari halka number	Bandobast Number	Tahsil	District	Area in hectares	Remarks
1.	Kanchanpur	67	168	Sohagpur	Shahdol	775.000	Part
2.	Raipur	68	889	Sohagpur	Shahdol	215.000	Part
3.	Udhiya	66	44	Sohagpur	Shahdol	510.998	Full
		Total: 1500.998 hectares (approximately) or 3709.04 acres (approximately)					

BOUNDARY DESCRIPTION:

A-B Line starts from point 'A' on the common boundary of villages Kanchanpur-Nargi and passes along common boundary of Village kanchanpur-Nargi, Udhiya-Nargi, Udhiya-Padariya, Udhiya-Dhanpura, Udhiya-Dhanpuri and meets at point 'B'.

B-C Line starts from point 'B' and passes along common boundary of villages Udhiya-Chhata, Kanchanpur-Chhata, Kanchanpur-Lalpur and meets at point 'C'.

C-D Line starts from point 'C' and passes through northern part of village Kanchanpur, Raipur and meet at point 'D'.

D-A Line starts from point 'D' and passes through middle part of village Raipur and meet at Starting point 'A'.

[F. No. 43015/01/2014-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1347.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल फर्टिलाइज़र लिमिटेड, पानीपत के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 7/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/168/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th April, 2014

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 7/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Fertilizers Limited, Panipat and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-42011/168/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 07 of 2013

Reference No. L-42011/168/2012-IR(DU)

Dated 28.02.2013

Workman through General Secretary,
NFL Mazdoor Conference(Regd.)
CITU Office, Near UCO Bank,
G.T. Road, Panipat, Haryana. .....Union

Versus

1. The Executive Director,
National Fertilizer Limited,
Panipat, Haryana.

2. M/s. Hindustan Fabricators & Contractors,
Rep. By Shri Ramphal,
B-505, Ansak Sushant City,
Panipat, Haryana. ....Respondents

Appearances

For the Workman/Union : None.

For the respondents. : Shri S.Kaushal for NFL i.e. respdt. No.1.
None for Respdt. No.2.

Award Passed On:-3.4.2014

Government of India Ministry of Labour vide notification No. L-42011/168/2012-IR(DU)dated 28.02.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether retrenchment/termination of services of workmen concerned(Contract Labourer work under M/s. R.K.Garg, Contractor, contract terminated on 31.12.2011 by the management of National Fertilizers Ltd., are just, fair and legal? If not, what relief the workmen concerned are entitled to?"

2. Case called repretedly. None has put up appearance on behalf of the workman despite registered notice. Earlier also the workman Montu appeared on 21.5.2013 and requested adjournment for filling of claim statement. Thereafter none has put up appearance on behalf of the workman. Registered notice was also issued to the workman on 20.1.2014 for 7.3.2014 but neither the workman/ union put up appearance nor any claim on behalf of the union/workmen filed. It appears that union/ workmen are not interested to persue the present reference.

3. In view of the above, this Tribunal has no option otherwise then to return the reference for want of prosecution. The reference is disposed off accordingly. Central Govt. Be informed. Soft as well hard copy be sent to the Central Govt. For publication.

Chandigarh
3-4-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1348.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी जनरल मैनेजर भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 61/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/24/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 61/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Dy. General Manager, Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 11/04/2014.

[No. L-40012/24/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 26th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 61/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN

Sri S. Mahalingam : 1st Party/Petitioner

AND

The Dy. General Manager – Admn. : 2nd Party/Respondent
Office of the General Manager
Bharat Sanchar Nigam Ltd.
Thanjavur, T.Nadu

Appearance :

For the 1st Party/Petitioner : Sri J. Muthukumaran, Advocate

For the 2nd Party/Respondent : M/s. T. Ravi Kumar & Ms. Vidhyutha, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/24/2013-IR(DU) dated 27.05.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of BSNL, O/o The General Manager, Thanjavur in imposing the punishment of removal from service of Sri S. Mahalingam is legal and justified? To what relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 61/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner who was serving as Daily Wage Mazdoor in the erstwhile Telephones Department of Government of India was appointed as Mazdoor on regular basis in May 1992. He was promoted and posted as Telephone Mechanic and had been working at Kuruvakulam in this capacity. The Inspector of Police, CBI, Chennai registered a case and filed Charge Sheet against the petitioner under Section-7 and Section-13(2) read with Section 13(1)(D) of the Prevention of Corruption Act. The petitioner who had undergone trial before the Special Judge for CBI Cases, Chennai was found guilty and convicted and sentenced to undergo rigorous imprisonment for 1 year and fine of Rs. 1,000 under Section-7 of Prevention of Corruption Act and to undergo rigorous imprisonment for 2 year and fine of Rs. 2,000 under Section-13(2) read with Section-13(1)(B) of the said Act. In appeal preferred by the petitioner the Hon'ble High Court modified and reduced the sentence under Section-13(2) read with Section 13 1D of Prevention of Corruption Act to one year. The Special Leave Petition filed by the petitioner before the Supreme Court of India against this judgment of the High Court was dismissed on 02.09.2011. In the meanwhile, after conviction by the Trial Court the Respondent by order dated 18.02.2008 informed the petitioner that he is deemed to have been placed under suspension. While appeal was pending before the High Court a Show Cause Notice was issued to the petitioner and subsequently by order dated 23.02.2009 the petitioner was removed from service. The petitioner had raised dispute before the DCLC (Chennai) challenging this order. Consequent to the failure of the conciliation proceedings, the dispute has been referred to this Tribunal for adjudication. Imposing penalty consequent on the conviction of an employee is not automatic. The Show Cause Notice of the Respondent does not specifically state the conduct which lead to the petitioner's removal from service so as to enable him to submit his explanation. The Respondent should have taken a lenient view taking into account his past service and imposed a lesser punishment rather than dismissal or removal from service. The petitioner is entitled to be reinstated in service with full back wages and continuity of service.

4. The Respondent has filed Counter Statement contending as follows:

The dispute is not maintainable before this Court. The conviction by the Trial Court is sufficient for awarding penalty to the employee under Rule-40 of the BSNL, Conduct, Discipline and Appeal Rules. The order against the petitioner has been passed after thorough examination of the facts of the case. The order made is within the power of the competent authority under the Disciplinary Rules. The petitioner had acted in a manner unbecoming of a government servant so the action against him by the department is only proper. The petitioner had indulged in corruptive practice and is not entitled to any leniency. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Exts.W1 to Exts.W4 and Exts.M1 to Exts.M18.

6. The points for consideration are :

(i) Whether the action of the Management in imposing the punishment of removal from service is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. The petitioner was appointed in erstwhile Telephones Department as Daily Wages Mazdoor in 1978. Ext.W1 is the order of appointment. He was posted as regular Mazdoor in 1992 as seen from Ext.W2. He had continued to work in the establishment, which was previously the Telephone Department and subsequently, Bharat Sanchar Nigam Ltd., the Respondent. While he was working so, he was placed under suspension by order dated 18.02.2008. He was dismissed from service on 23.02.2009 as seen from Ext.W4.

8. The conviction of the petitioner in the criminal case charged against him by CBI, Chennai under various sections of the Prevention of Corruption Act had resulted in the suspension of the petitioner and his removal from service. The judgment of the Sessions Court in the case against the petitioner itself is not seen produced. However, it is very much clear from the Claim Statement itself that the petitioner was convicted in the case and the High Court had sustained the conviction with some modification in the sentence. As seen from the Claim Statement, the Special Leave Petition preferred by the petitioner before the Hon'ble Supreme Court also was dismissed. Even before this dismissal, while appeal was pending before the Hon'ble High Court, the petitioner seems to have been dismissed from service, as seen from Ext.W4. The Respondent seems to have started proceedings against him immediately after his conviction by the Sessions Court.

9. The case that is advanced on behalf of the petitioner is that merely on account of his conviction in the sessions case he was not liable to have been removed from service. It is stated that the Show Cause Notice that was issued against him proposing the punishment of removal from service is very vague and he was not able to give a proper explanation for the same. On the other hand it is contended by the Respondent that in view of the Conduct, Discipline and Appeal Rules of the Respondent, it was empowered to take action against the petitioner on the basis of the conviction itself.

10. The BSNL Conduct, Discipline and Appeal Rules has been produced and marked as Ext.M13. Rules 35, 36 and 37 of this prescribe the procedure for imposing penalties on employees. Rules-40 states that notwithstanding anything contained in the said rules, the Disciplinary Authority may impose any of the penalties specified in Rule-33 in certain circumstances including one where the employee has been convicted on a criminal charge or on the strength of facts or conclusion arrived at by a judicial trial. It is on the basis of this Rule-40A, the Respondent has proceeded against the petitioner after his conviction in the criminal case and imposed the penalty of removal from service. The Respondent is well within it power to impose the penalty in view of the said rule.

11. The petitioner has claimed in the Claim Statement that in any case leniency should have been shown to him in the matter of punishment. I am unable to accept this argument on behalf of the petitioner also. The petitioner was charged for corruption and he was found guilty under various sections of the Prevention of Corruption Act. His conviction was confirmed even by the highest Court. The Counsel for the Respondent drawn attention to the decision of the Apex Court in UNION OF INDIA AND OTHERS VS. KK DHAWAN reported in 1993 2 SCC 56 where the Court has quoted with approval a decision of the Queens Bench approving dismissal of the employee for the misconduct of corrupt practice. It was a case where the petitioner had resorted to the practice of accepting bribe from a customer. The petitioner is not entitled to even to any leniency in the matter of punishment. The reference is to be answered against him.

12. In view of my discussion above; the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri S. Mahalingam

For the 2nd Party/ Management : MW1, Sri L. Chandraprakash

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	14.02.1978	Appointment as Daily Wages Mazdoor
Ex.W2	15.05.1992	Posting order as regular mazdoor
Ex.W3	18.02.2008	Order of Suspension
Ex.W4	23.02.2009	Order of Dismissal

On the Management's side

Ex. No.	Date	Description
Ex.M1	04.10.2005	Summons issued in RC No. 42 of 2002 by Superintending of Police, CBI
Ex.M2	06.09.2005	Summons to witness issued by Hon'ble VIII Principal Special Judge for CBI cases to R. Balaraman

Ex.M3	17.07.2006	Summons issued in RC No. 42 of 2002 to GM, BSNL, Thanjavur by Superintendent of Police, CBI for the case before the VIIIth Additional City Civil Court
Ex.M4	17.12.2007	Order passed by Hon'ble High Court in Criminal Misc. Petition No. 1 of 2013 in Criminal Appeal No. 1104 of 2007
Ex.M5	29.01.2009	Department of Telecom Letter – ratification of proposal of removal from service
Ex.M6	03.02.2009	BSNL Headquarter's letter to Vigilance Office, CGMT, BSNL, Tamil Nadu Telecom Circle, Chennai. Removal of service acceptance
Ex.M7	09.10.2012	Ministry of Communication and IT, DoT Tamilnadu Circle, Chennai – 8 – Letter to Chief Accounts Officer, Thanjavur
Ex.M8	15.11.2012	Letter of Senior Accounts Office, Thanjavur to Assistant Controller of Communication, Accounts, Chennai-8 forwarding additional documents
Ex.M9	22.04.2010	Order passed by the Central Administrative Tribunal in OA 541 of 2009 holding that there is no merit in the OA filed
Ex.M10	02.01.2010	Reply statement filed by BSNL, Thanjavur before Assistant Labour Commissioner, Central, Pondicherry in Application No. Nil of 2012
Ex.M11	23.02.2009	Order passed by Disciplinary Authority and Deputy General Manager (Admn.) imposing a penalty of removal from service
Ex.M12	09.01.2013	Failure Conciliation Report submitted u/s 12(4) of the ID Act by Asstt. Labour Commissioner (Central), Pondicherry
Ex.M13	-	BSNL Conduct, Discipline Appeal Rules, 2006
Ex.M14	3/2013	Swamy's News relating to Tribunal interference with punishment
Ex.M15	14.08.1996	Judgment of the Supreme Court in the case of J. Jayasankar Vs. Union of India and another
Ex.M16	01.07.2013	OA No. 886 of 2013 filed by Mahalingam before the Central Administrative Tribunal, Chennai
Ex.M17	05.07.2013	Order passed by Central Administrative Tribunal in the case of S. Mahalingam
Ex.M18	28.08.2013	BSNL letter to S. Mahalingam regarding grant of Pension

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या CGIT-1/23 of 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/16/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT-1/23 of 2013) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-40012/16/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present:

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO.CGIT-1/23 OF 2013

Parties : Employers in relation to the management of Bharat Sanchar Nigam Limited

And

Their workman (Ashish Govind Bhovad)

Appearances :

For the first party no. 1 Management	:	Mr. Alva, Adv.
For the first party no. 2 Contractor	:	None present.
For the second party workman	:	None present.
State	:	Maharashtra

Mumbai, dated the 25th day of March, 2014

AWARD

1. The present reference has been made by the Central Government by its order dated 22.4.2013 passed in exercise of the powers conferred by clause (d) of sub- section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act 1947. The terms of reference as per the schedule to the said order are as under:

> "Whether the dismissal of Shri Ashish Govind Bhovad, contract workman during tender period by Shri R B Jadhav, BSNL Contractor is legal and justified? To what relief the workman is entitled tor?"

2. By the order dt.15.5.2013 this Tribunal directed for issuance of notices to the parties. Notice issued to the first party no.1 / Management by registered post AD was duly served and the acknowledgement card was received back. Notice sent to the first party no.2 (R.B.Jadhav) / Contractor by registered post AD was duly served and the acknowledgement card was received back. Further, notice sent to the second party / workman (A.G.Bhovad) sent by registered post AD was also duly served and the acknowledgement card was received back.

3. On the date fixed in the notice i.e.21.6.2013 Mrs. Masurkar, Advocate was present for the first party no.1 / Management. However, none was present on behalf of the first party no.2 / contractor or the second party / workman. On the said date i.e.21.6.2013, a letter dt.19.6.2013 sent by the first party no.2 / Contractor (R.B.Jadhav) was received. Alongwith the said letter a Xerox copy of the statement purporting to have been made by A.G. Bhovad (second party/workman) was enclosed. The said Xerox copy was certified as true copy by the Notary on 18.6.2013.

4. As none was present on behalf of the second party/ workman on the aforesaid date i.e.21.6.2013, the case was adjourned to 8.8.2013.

5. On 8.8.2013 the post of Presiding Officer of this Tribunal was vacant. On the said date, none was present on behalf of the workman nor was anyone present on behalf of the first party no.l/Management or the first party no.2 / Contractor. In the circumstances, the case was fixed for 22.11.2013.

6. On 22.11.2013, Mrs.Masurkar, Advocate was present on behalf of the first party no. l/ Management. However, none was present on behalf of the second party/workman nor was anyone present on behalf of the first party no.2/ Contractor. In the circumstances, the case was adjourned to 3.1.2014.

7. On 3.1.2014 Mrs.Masurkar, Advocate was present on behalf of the first party no. 1/Management. However, none was present on behalf of the first party no.2/ Contractor nor was anyone present on behalf of the second party/ workman. In the circumstances, the case was adjourned to 12.2.2014 for filing of statement of claim on behalf of the second party/workman.

8. On 12.2.2014 Mr.Mhatre, Advocate holding brief for Mrs.Masurkar, learned counsel for the first party no.1/ Management was present. However, none was present on behalf of the second party/workman nor was anyone present on behalf of the first party no.2/Contractor. In the circumstances, the case was adjourned to 25.3.2014 i.e. today for filing of statement of claim on behalf of the second party / workman.

9. The case is taken up today. Mr.Mhatre, Advocate holding brief for Mrs.Masurkar learned counsel for the first party/Management is present. However, none is present on behalf of the second party/workman nor is anyone present on behalf of the first party no.2/Contractor.

10. From the above narration of facts, it is evident that despite service of notice on the second party/workman, he has not put in appearance in the matter. No statement of claim has been filed on behalf of the second party / workman. There is thus no pleading or evidence filed on behalf of the workman in support of his claim. No relief can therefore be granted to the second party/workman.

11. The Reference is answered by stating that no relief can be granted to the workman.

12. The Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1350.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर टेलीकॉम बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 336/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/429/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 336/ 2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Telecom, Bathinda and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-40012/429/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.336/2005

Registered on 16.8.2005

Sh. Surinder Kumar, S/o Sh. Kheta Ram,
C/o Sh. N.K Jeet, President,
Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road, Bathinda. ....Petitioner

Versus

The General Manager, Telecom, Bathinda. ...Respondent

APPEARANCES

For the workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 10-3-2014

Central Government vide Notification No. L-40012/429/99-IR(DU) Dated 16.2.2000, by exercising its powers under Section 10 Sub section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Management of General Manager Telecom, Ferozepur in terminating the services of Sh. Surinder S/o Sh. Kheta Ram is legal and justified? If not, to what relief the workman is entitled to and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he had been serving in the Office of JTO Malout since 16.4.1997 drawing a salary of Rs.2138 per month and his services were illegally terminated on 5.3.1999 without serving him any notice or payment of compensation. That the persons junior to him were retained in service and even other persons were employed after his termination. That he is entitled to reinstatement with all the consequential benefits.

Respondent management filed written reply pleading that there was no relationship of employer and employee between the parties. That the management used to give contract for providing labour and if workman was engaged by the contractor, he had not become employee of the respondent management.

Parties led their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management examined Jatinder Chinia and Pritpal Singh who filed separate affidavits supporting the stand taken by the respondent management in the written statement.

I have heard Sh. Charanjit, counsel for the workman and Sh. Anish Babbar, counsel for the management.

Learned counsel for the workman carried me through the duty chart placed at page No.14 to 21 of the file. Photocopy of another document which are at Page No.22 to 49 submitted that the duty chart and another documents clearly prove that the workman was engaged by the respondent management; further submitted that since the management has given evasive reply regarding the salary of the workman which further goes to prove that the workman actually worked in the management.

I have considered the contention of the learned counsel.

It is the definite case of the workman that he served with JTO Malout on permanent job from 16.4.1997 to 5.3.1999. The respondent management is a statutory body having its Rules and Regulations for employing the person in its office. It is nowhere pleaded or proved that the workman was appointed against a permanent job by following any procedure.

It is not proved on the file that the documents which are at page No.14 to 49 are of the respondent management as these were simply placed on record and were not proved by the workman. It cannot be said that the documents were authorised by the respondent management. According to the workman he was drawing a salary of Rs.2138/- per month. But no record has been summoned by the workman to prove this fact.

Thus it is not proved on the file that the workman was an employee of the respondent management and his services were terminated.

In result, the reference is answered against the workman holding that he is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1351.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिसिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 13/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/101/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 13/2004) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Senior Superintendent of Post Offices and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-40012/101/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 13 of 2004

Reference No. L-40012/101/2003-IR(DU)

Dated 29.01.2004.

Sh. Sukhwinder Singh S/o Sh. Tara Singh,
Ex-EDBPM, C/o Hazara Branch Post Office,
Punjab. .....Workman

Versus

1. The Sr. Supdt. of Post Offices,
Deptt. of Posts, Jalandhar Division,
Jalandhar(Punjab). .....Respondent

Appearances

For the Workman : None for the workman.

For the Management : Shri K.K.Thakur, Advocate.

AWARD

Dated : 31.03.2014

Government of India Ministry of Labour vide notification No.L-40012/101/2003-IR(DU)dated 29.01.2004 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

> "Whether the action of the management of Sr. Supdt. of Post Offices, Jalandhar Division, Jalandhar in removing the services of Sh. Sukhwinder Singh S/o Sh. Tara Singh, Ex-EDBPM w.e.f. 03.07.2001 is legal and just? If not what relief the concerned workman is entitled to and from which date?"

2. The claim of the workman in claim statement is that while working as Extra Departmental Branch Post Master, he was served with the following charge sheet :

"ARTICLE–I

While working as ED BPM Hazara BO Sh. Sukhwinder Singh accepted Rs.2000/- for deposit for the month of 7/2000 in r/o RD A/C No.621557 & was not accounted for to the Govt. account. Thus, Sh. Sukhwinder Singh alleged to have misappropriated the Govt. money to the tune of Rs.2000 on 9.7.2000.

Sh. Sukhwinder Singh thus alleged to have violated the provision Rule-124 of Rules for BO Rules 7th Edition. He is also alleged to have failed to maintain devotion to duty envisaged in Rule 17 of EDA's (C&S) Rules, 1964.

ARTICLE–II

Statement of article of charge framed against Sh. Sukhwinder Singh, EDBPM, Hazara BO in account with Jandhu Singha SO (JL City).

ARTICLE-I

Sh. Sukhwinder Singh while performing the duty of ED BPM at Hazara BO alleged to have accepted Rs.2000 for deposit in RD A/C No. 621557 from the depositor Baljit Kaur w/o Sh. Gurmit Singh R/o VPO : Hazara, Distt. Jalandhar on 9.7.2000 for the month of 7/2000, made entry of deposit in the relevant pass book wrote dated 9-7-2000. Name of month 7/2000 affixed date stamp impression 22-7-2000, struck the balance Rs. 8000 & put his initials in the prescribed column. The amount so accepted by him was not taken into Govt. account and alleged to have misappropriated the amount to the tune of Rs. 2000 Two thousand only & infringed instructions contained in Rule 124 of "Rules of Branch Offices".

3. The workman replied to the charge sheet but without looking into the contents of the reply, the management in haste appointed one Shri Chaman Lal SPM, Lajpat Nagar Post Office as the enquiry officer who was completely under the control of the management. It is further pleaded by the workman that the enquiry officer did not follow the procedure as prescribed under the rules. He also played the role of the presenting officer as all the departmental witnesses were examined by him and all the defence witnesses were cross-examined by the enquiry officer. The relevant documents were not supplied to the workman and his request was declined illegally and arbitrarily. The workman was not allowed to cross-examine the witnesses the management. The finding recorded by the enquiry officer are based on no evidence as there was no evidence to show that the alleged Baljit Kaur or the workman had ever deposited a sum of Rs. 2000 with the workman or workman ever accepted the same from the said Baljit Kaur. Baljit Kaur during enquiry proceedings did not support the allegations against the workman nor had she asked for any action against the workman. It is further pleaded that whole action has been initiated against the workman with

malafide intention by the management. It is further pleaded that no documents has been produced by the management during enquiry proceedings to show that said Smt. Baljit Kaur had ever given any money to the workman. There is no evidence against the workman and the whole action against the workman have been taken with malicious intention. It is further pleaded that all the pass books issued or maintained by the workman were thoroughly checked but nothing has been found against the workman. It is further pleaded that on the basis of such doubtful entries, the extreme penalty of removal of service was imposed which is totally unwarranted as there was no such complaint against the workman for the last ten years. Inquiry was conducted against the principle of natural justice. Therefore, it is prayed by the workman that his termination may be declared illegal and the management may be directed to reinstate the workman with full back wages.

4. The management filed written statement by pleading that workman while working as ED BPM misappropriated Rs. 2000 of RD A/C No. 621557 of one Baljit Kaur who applied for transfer of her said A/C no. at Adampur Doaba SO Jalandhar City from Hazara Branch Office which was showing balance of Rs. 8000 on 28.7.2000. The SPM Adampur Doaba sent the SB 10(b) and RD Pass book to Senior Post Master Jalandhar who returned the same with the remarks to sent LOT showing balance of Rs.8000 in the above account. In reply , SPM Jhandu Singh SO informed that balance in the said account is Rs.6000. As such there is a difference of Rs. 2000 in the pass book and the record of Jhandu Singh PO. The Senior Post Master Jalandhar City made a report to Senior Superintendant of Post Office Jalandhar who ordered enquiry. In enquiry it is revealed that Sh. Sukhwinder Singh GDS BPM Hazara accepted Rs. 2000 on 9.7.2000 from Smt. Baljit Kaur alongwith pass book, prepared pay in slip at is own level made entry on the deposit in RD Pass Book on 9.7.2000 with stamp impression of date as 22.7.2000. The workman did not account for Rs. 2000 and pocketed the amount. The workman himself voluntarily credited the amount of Rs. 2000 to the Govt. on 28.8.2000 at the time of enquiry. The workman served with the charge sheet and on culmination of the enquiry he was removed from service. The appeal filed by the workman was also rejected. The punishment imposed upon the workman is proportionate to the gravity of misconduct. Therefore, the workman is not entitled for any relief. It is further pleaded that the punishment imposed upon the workman is based upon his own confessional statement dated 28.8.2000 and reference deserve dismissal.

5. In evidence workman filed his affidavit alonwith documents. The management also examined Shri N.R.Meena as MW1 who filed his affidavit and examined as MW1. Both the witnesses were cross-examined by the rival counsel. Workman while appearing as WW1 in cross examination admitted that Ex.M1 is application dated 28.8.2000 which bears his singnatures at point A but the same was written and signed under pressure of Sh. Girdhari Lal Biba, Sub Divisional Inspector North, Nirmaljit Singh Senior Supdt. Post Office, Ramesh Kumar of F.Branch and Assistant Mr. Flora and he had never complained to Higher Authorities about the pressure by the above persons. He also stated in cross-examination that he does not remember as to whether he had made any allegations against these persons in his appeal to the appropriate authority. Witness of the management Sh. N.R.Meena stated in his cross-examination that Baljit Kaur was examined during the enquiry. On 9-7-2000 it was Sunday but EDP Office is functional even on Sunday. The witness denied that complaint of Baljit Kaur is false. It is further stated by the witness in his cross-examination that copy of enquiry report was given to the workman. Show cause notice was also given.

6. I have gone through the enquiry record, confessional statement and evidence recorded in this Tribunal .

7. The case was fixed for arguments from the last several dates. None appered for the workman and arguments of the management heard. The management also placed on record the written arguments.

8. The case of the workman in short is that though he has given confessional statement on 28.8.2000 but the same was forcibly got signed under pressure and coercion. The complaint Baljit Kaur never handed over any money to him nor the same was proved during enquiry. It is also the case of the workman that the enquiry officer had conducted the enquiry in violation of principles of natural justice. The enquiry officer also performed as presenting officer and acted as per the direction of the management. He conducted the enquiry in a partial manner and it is case of no evidence and charges were allegedly proved without any basis. The workman prayed that the punishment imposed upon the workman is disproportionate to the alleged misconduct and major penality of removal from service was imposed which is against the equity and fair play. The request of the workman is to reinstate him in service with full back wages as the order of removal of service is illegal and arbitrary having based on no evidence.

9. On the other hand the learned counsel of the management during arguments submitted that the workman was charge sheeted for mis appropriation of Rs.2000 from the account of one Smt Baljit Kaur. During enquiry proceedings the workman voluntarily made confessional statement on 28-8-2000 and also deposited Rs.2000 on the same date. It is after thought of the workman to allege that he was pressurised by the official of the management as mentioned above to write confessional statement dated 28.8.2000 and deposit of Rs.2000 in the Govt. account by

the workman. Enquiry was held against the workman in accordance with the principle of natural justice. He was given the copy of findings of enquiry officer. The workman also given show cause notice before imposing the punishment. His appeal was also rejected by the Appellate Authority. It is further submitted by the Learned Counsel for the management that the punishment imposed was commensurate with the misconduct of misappropriation of Rs.2000 by the workman. The workman was found guilty and therefore, the workman is not entitled to any relief.

10. So far the enquiry is concerned, it is clearly revealed from the record that the workman was served with the charge sheet. Sh. Chaman Lal was appointed as Enquiry Officer. All the documents were supplied to the workman alongwith charge sheet. During enquiry the workman voluntarily given confessional statement on 28-8-2000. Which is in Punjabi language and on translation the contents reveals that the workman admitting that he had received Rs. 2000 for the installment of seventh month of RD A/C No. 621557 from Smt. Baljit Kaur W/o Gurmit Singh on 9.7.2000 but the same were not deposited in Govt . account and by this application he is requisting to the authorities to allow him to deposit Rs. 2000 of the installment in Govt. account. It is also revealed that the workman vide receipt mentioned on this application deposited Rs. 2000 . The workman never reported at any point of time and in appeal filed by him to the Appellalte Authority that he was pressurized to deposit Rs. 2000 and to write the confessional statement. The workman was given full opportunity to defend himself during enquiry. He was supplied all the documents alongwith the charge sheet. The workman in his statement in the enquiry also admitted that Rs.2000 was given by Smt. Baljit Kaur for the installment of seventh month in RD A/C No. 621557 . The workman himself prepared in pay- in-slip and also made entry in the pass book.

11. In view of the above, taking into consideration the record, confessional statement dated 28-8-2000 and statement of the workman recorded in enquiry before the enquiry officer and his clear admission, it is held that enquiry was conducted in fair and proper manner adhering to the principle of natural justice and there is no infirmity in the enquiry.

12. As regard the punishment of removal from service of the workman is concerned, the workman has mis-appropriated the amount of the customer and admitted his guilt during the enquiry proceedings and also deposited Rs. 2000 which was mis appropriated by him, no interference is warranted by this Tribunal.

13. In view of the discussion made above in the preceding paras, the action of the management of Sr. Supdt. Of Post Offices, Jalandhar Division Jalandhar in removing the services of Sh. Sukhwinder Singh S/o Tara Singh Ex-EDBPM w.e.f. 3-7-2001 is legal and just and the workman is not entitled to any relief.

14. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to Central Govt. for publication.

Chandigarh
31-3-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1352.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 109/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 109/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Controller General, Patent & Design Trade Marks, Patent Office and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No. 109/2012

Shri Santosh Kumar
S/o Sh.Budh Ram Manjhi,
R/o H.No.3/76-A, Gali No.3,
Mohan Garden, Near Balaji Chowk,
Uttam Nagar, New Delhi-110078 ...Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent
& Design, Patent Office
Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078 ...Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act, 1970 for granting patents on new non-obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Santosh Kumar, without giving one month notice or pay in lieu thereof and retrenchment compensation. This irked Shri Santosh Kumar, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Santosh Kumar opted to file his dispute before the Tribunal using provisions of sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Santosh Kumar pleading that he was engaged as a casual labour/daily wager by the management on 01.02.2006 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 10.07.2006. He was again engaged on 21.11.2006. With an ulterior motive, the management gave break on 01.08.2007 and again engaged him on 17.12.2007. He worked till 31.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 31.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no.POD/405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.9,853.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as resjudicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms.Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms. Madhvi K Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No. 1

9. At the outset, the management contends that it is not an industry within the meaning of Section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of Section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of Section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity

possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'industry". Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the Association was established to carry on research with respect to the

textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry' if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a

research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers ingredents of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms.Suresh Singhal unfolds in her affidavit Ex.MW1/A, tendered as evidence, that the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms.Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub section. The third part

connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer legal principles are to be taken note of. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

> "14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—
>
> (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post

connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All India Service; or

(ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub- clause (ii) or sub- clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

"28. 'On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in Premier Automobiles [1976(1) SCC 496]. On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be. We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation [1995(5) SCC 75] summarised those principle as follows:

> "(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.
>
> (2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.
>
> (3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.
>
> (4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.
>
> (5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.
>
> (6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.
>
> (7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. [1991(1) SLR 245] wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act.

Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res-judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under Section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of Section 25B of the Act. sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under Section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to Section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of Section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the

employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under Section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 01.02.2006 as daily wager. He continuously performed his duties till 31.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/22. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/22 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 241 days. He had rendered 201 days service in preceding 12 months from April, 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April, 2008 to March, 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of Section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms.Singhal projects that the claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub section (oo) of section 2 of the Act is not applicable to his case. For applicability of sub-clause (bb) of sub-section (oo) of section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here–can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection

where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P. Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfoleded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

"3. Act not to apply in relation to certain vacancies.

(1) This Act shall not apply in relation to vacancies.-

(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

(b) in any employment in domestic service ;

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament.

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

"Unskilled office work" means work done in an establishment by any of the following categories of employees, namely, -

(1) daftri,
(2) jamadar, orderly and peon;
(3) dusting man or farash;
(4) bundle or record lifter ;
(5) process server;
(6) watchman;
(7) sweeper;
(8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the

worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi Government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Article 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It can not be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken in to account. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.
>
> Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii)

circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs.50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs.65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated :
01.04.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1353.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 108/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था ।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 108/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Controller General, Patent & Design Trade Marks, Patent Office and their workman, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 108/2012

Shri Sandeep Kumar
S/o Sh.Surendra Singh,
R/o H.No.385, Kakrola Housing Complex,
New Delhi-110059. .....Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent & Design,
Patent Office, Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078. .....Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act 1970 for granting patents on new non obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/ intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Sandeep Kumar, without giving one month notice or pay in lieu thereof and retrenchment compensation. This irked Shri Sandeep Kumar, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Sandeep Kumar opted to file his dispute before the Tribunal using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Sandeep Kumar pleading that he was engaged as a casual labour/daily wager by the management on 15.03.2007 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 11.12.2007. He was again engaged on 17.12.2007. With an ulterior motive, the management gave break on 11.12.2007 and again engaged him on 17.12.2007. He worked till 30.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 30.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no.POD/ 405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.10,354.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as resjudicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms.Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms.Madhvi K Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No.1

9. At the outset, the management contends that it is not an industry within the meaning of section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized

activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'industry". Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the

Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry' if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : If a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an

Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers ingredents of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms.Suresh Singhal unfolds in her affidavit Ex.MW1/A, tendered as evidence, that the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms.Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by Section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957), or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison, or
>
> (iii) who is, employed mainly in a managerial or administrative capacity, or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four

categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that , for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer legal principles are to be taken note of. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res- judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under Section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under Section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of Section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of Section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

> "14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—
>
> (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) all service matters concerning—
>
> (i) a member of any All India Service; or

(ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub- clause (ii) or sub- clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

"28. 'On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to Industrial Dispute, the Apex Court dealt with the matter in Premier Automobiles [1976(1) SCC 496]. On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an Industrial Dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an Industrial Dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the Industrial Dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an Industrial Dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an Industrial Dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an Industrial Dispute even though it may otherwise be an Individual Dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of Industrial Disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation [1995(5) SCC 75] summarised those principle as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "Industrial Dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute Industrial Disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial Dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an Industrial Dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. [1991(1) SLR 245] wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do

not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the Industrial Dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words "actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman

had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under Section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 15.03.2007 as daily wager. He continuously performed his duties till 30.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/4. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/4 is scanned, it came to light that in preceding 12 months from 30.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 256 days. He had rendered 236 days service in preceding 12 months from April 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April 2008 to March 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms. Singhal projects that the

claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub-section (oo) of Section 2 of the Act is not applicable to his case. For applicability of sub clause (bb) of sub -section (oo) of Section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of Section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent-the distinction between regularization and making permanent, was not emphasized here–can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the Employment Exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfoleded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

> "3. Act not to apply in relation to certain vacancies.-
> (1) This Act shall not apply in relation to vacancies.-
>
> (a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;
>
> (b) in any employment in domestic service ;
>
> (c) in any employment the total duration of which is less than three months;
>
> (d) in any employment to do unskilled office work;
>
> (e) in any employment connected with the staff of Parliament.
>
> (2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-
>
> (a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;
>
> (b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

> "Unskilled office work" means work done in an establishment by any of the following categories of employees, namely,—
>
> (1) daftri,
>
> (2) jamadar, orderly and peon;
>
> (3) dusting man or farash;
>
> (4) bundle or record lifter ;
>
> (5) process server;
>
> (6) watchman;
>
> (7) sweeper;
>
> (8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be "unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the

nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Article 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It can not be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken in to account. In S.S.Shetty (1957 (11) LLJ 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.
>
> Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LLJ 398) the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy (1970 (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty (1962 (II) LLJ 483) the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs. 75000 in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 01-04-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1354.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 107/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 107/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Controller General, Patent & Design Trade Marks, patent Office and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 107/2012

Shri Dheeraj Kumar
S/o Late Sh.Anand
R/o H.No.19-A, Village & PO Kakrola,
New Delhi. .....Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent & Design,
Patent Office, Baudhik Sampada Bhawan,
Dwarka, New Delhi. ....Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act 1970 for granting patents on new non obvious inventions. The management is a suboridinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Dheeraj Kumar, without giving one month notice or pay in

lieu thereof and retrenchment compensation. This irked Shri Dheeraj Kumar, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Dheeraj Kumar opted to file his dispute before the Tribunal using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Dheeraj Kumar pleading that he was engaged as a casual labour/daily wager by the management on 04.08.2006 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 30.12.2006. He was again engaged on 15.3.2007. With an ulterior motive, the management gave break on 10.12.2007 and again engaged him on 17.12.2007. He worked till 30.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 30.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no.POD/405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.10,354.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as resjudicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms.Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms.Madhvi K Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No. 1

9. At the outset, the management contends that it is not an industry within the meaning of section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity

is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a)Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range

of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'industry". Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital

investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry' if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers

ingredents of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms. Suresh Singhal unfolds in her affidavit Ex.MW1/A, tendered as evidence, that the the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms. Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions.

It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that , for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer legal principles are to be taken note of Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

"The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council(1939 (2) KB 426 at P.437) it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

> "14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—
>
> (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) all service matters concerning—
>
> (i) a member of any All India Service; or
>
> (ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or
>
> (iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;
>
> (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub- clause (ii) or sub- clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

> "28. 'On and from the date from which any jurisdiction, powers and authority becomes

exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in Premier Automobiles [1976(1) SCC 496]. On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation [1995(5) SCC 75] summarised those principle as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be

exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. [1991(1) SLR 245] wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B

of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 04.08.2006 as daily wager. He continuously performed his duties till 30.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/11. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/11 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 257 days. He had rendered 201 days service in preceding 12 months from April 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April 2008 to March 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by

the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms.Singhal projects that the claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub -section (oo) of section 2 of the Act is not applicable to his case. For applicability of sub -clause (bb) of sub- section (oo) of section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs and Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfolded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act

enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

"3. Act not to apply in relation to certain vacancies.-

(1) This Act shall not apply in relation to vacancies.-

(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

(b) in any employment in domestic service ;

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament.

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

"Unskilled office work" means work done in an establishment by any of the following categories of employees, namely, -

(1) daftri,

(2) jamadar, orderly and peon;

(3) dusting man or farash;

(4) bundle or record lifter ;

(5) process server;

(6) watchman;

(7) sweeper;

(8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Article 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It can not be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken into account. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.
>
> Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur [(1983) Lab.I.1755 (1758)] deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.4.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 106/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 106/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Controller General, Patent and Design Trade Marks, patent Office and their workman, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 106/2012

Shri Rama Kant
S/o Late Sh. Ram Sagar,
R/o H.No. RZ-26-A/207,
J Block, Gali No. 6, West Sagarpur,
New Delhi. ...Workman

Versus

The Controller General
Patent and Design Trade Marks,
Through Assistant Controller of Patent and Design,
Patent Office, Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078. ...Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act, 1970 for granting patents on new non obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/ intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Rama Kant, without giving one month notice or pay in lieu thereof and retrenchment compensation. This irked Shri Rama Kant, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Rama Kant opted to file his dispute before the Tribunal using provisions of sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Rama Kant pleading that he was engaged as a casual labour/daily wager by the management on 15.03.2007 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 18.07.2007. He was again engaged on 08.08.2007. With an ulterior motive, the management gave break on 1, 2, 3, 6, and 7 August 2007 and again engaged him on 08.08.2007. He worked till 31.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 31.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed

intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no.POD/405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.10,354.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as resjudicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms. Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms. Madhvi K. Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No. 1

9. At the outset, the management contends that it is not an industry within the meaning of section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were

made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'industry". Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720)] the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers ingredents of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms. Suresh Singhal unfolds in her affidavit Ex. MW1/A, tendered as evidence, that the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms. Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding

under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer

legal principles are to be taken note of. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the

interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

"14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All India Service; or

(ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

"28. 'On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in Premier Automobiles [1976(1) SCC 496]. On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation [1995(5) SCC 75] summarised those principle as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the

powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. (1991(1) SLR 245) wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12

calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 15.03.2007 as daily wager. He continuously performed his duties till 31.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/6. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/6 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 259 days. He had rendered 201 days service in preceding 12 months from April, 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April, 2008 to March, 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself

excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms.Singhal projects that the claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub-section (oo) of section 2 of the Act is not applicable to his case. For applicability of sub-clause (bb) of sub-section (oo) of section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here–can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the

said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfoleded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

> "3. Act not to apply in relation to certain vacancies.-
>
> (1) This Act shall not apply in relation to vacancies.-
>
> (a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;
>
> (b) in any employment in domestic service ;
>
> (c) in any employment the total duration of which is less than three months;
>
> (d) in any employment to do unskilled office work;
>
> (e) in any employment connected with the staff of Parliament.
>
> (2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-
>
> (a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

> "Unskilled office work" means work done in an establishment by any of the following categories of employees, namely, -
>
> (1) daftri,
>
> (2) jamadar, orderly and peon;
>
> (3) dusting man or farash;
>
> (4) bundle or record lifter ;
>
> (5) process server;
>
> (6) watchman;
>
> (7) sweeper;
>
> (8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be "unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi Government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the Department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It cannot be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken into account. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including

reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs.50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh [1993 Lab.I.C.44] the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal [1985 Lab.I.C.1225] a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari [1988 Lab.I.C.107] a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1356.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 105/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 105/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Controller General, Patent & Design Trade Marks, Patent Office and their workmen, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 105/2012

Shri Sanjeev Kumar
S/o Sh. Phool Singh,
R/o H. No. 5, VPO Kakrola,
New Delhi-110078. ...Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent & Design,
Patent Office, Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078. ...Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act, 1970 for granting patents on new non obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/ intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Sanjeev Kumar, without giving one month notice or pay in lieu thereof and retrenchment compensation. This irked Shri Sanjeev Kumar, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Sanjeev Kumar opted to file his dispute before the Tribunal using provisions of sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Sanjeev Kumar pleading that he was engaged as a casual labour/daily wager by the management on 07.05.2007 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 12.12.2007. He was again engaged on 17.12.2007. With an ulterior motive, the management gave break on 12.12.2007 and again engaged him on 17.12.2007. He worked till 30.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 30.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no. POD/ 405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.9,352.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as res-judicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'Industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as res-judicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms.Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms.Madhvi K Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No. 1

9. At the outset, the management contends that it is not an industry within the meaning of section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "Industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "Industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "Industry" by the High Courts and the Apex Court time and again. The question as to what is "Industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "Industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'Industry". Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non-obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve co-operation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water

Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers ingredients of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms.Suresh Singhal unfolds in her affidavit Ex. MW1/A, tendered as evidence, that the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms.Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957), or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison, or
>
> (iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he fails in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that , for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer legal principles are to be taken note of. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says

is that once a res-judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under Section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson V. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of

action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

"14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All India Service; or

(ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub- clause (ii) or sub- clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

"28. 'On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in Premier Automobiles [1976(1) SCC 496]. On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation [1995(5) SCC 75] summarised those principle as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute'' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the

only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. [1991(1) SLR 245] wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman

has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words "actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 07.05.2007 as daily wager. He continuously performed his duties till 30.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/4. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/4 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 251 days. He had rendered 201 days service in preceding 12 months from April 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April 2008 to March 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained

in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms.Singhal projects that the claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub-section (oo) of section 2 of the Act is not applicable to his case. For applicability of sub clause (bb) of sub-section (oo) of section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent-the distinction between regularization and making permanent, was not emphasized here–can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfolded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

> "3. Act not to apply in relation to certain vacancies.-
>
> (1) This Act shall not apply in relation to vacancies.-
>
> (a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;
>
> (b) in any employment in domestic service ;
>
> (c) in any employment the total duration of which is less than three months;
>
> (d) in any employment to do unskilled office work;
>
> (e) in any employment connected with the staff of Parliament.
>
> (2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-
>
> (a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;
>
> (b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

"Unskilled office work" means work done in an establishment by any of the following categories of employees, namely, -

(1) daftri,

(2) jamadar, orderly and peon;

(3) dusting man or farash;

(4) bundle or record lifter ;

(5) process server;

(6) watchman;

(7) sweeper;

(8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Article 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It can not be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken in to account. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs.50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंट्रोलर जनरल पेटेंट और डिज़ाइन ट्रेड मार्क्स पेटेंट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 104/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th April, 2014

S.O. 1357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 104/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Controller General, Patent & Design Trade Marks, Patent Office and their workman, which was received by the Central Government on 11/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No. 104/2012

Shri Raju Kumar Sah
S/o Sh.Punya Dev Prasad,
R/o H.No.52/333, IInd FLoor,
Gali No.10, Madanpuri West Sagarpur,
New Delhi-110046. .....Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent
& Design, Patent Office,
Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078. .....Management

AWARD

The Controller General, Patents, Designs and Trade Marks (hereinafter referred to as the management), is a statutory body created under the provisions of the Indian Patents Act 1970 for granting patents on new non obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/ intermittent nature. The management terminated services of one of the persons, so employed, namely, Shri Raju Kumar Sah, without giving one month notice or pay in lieu thereof and retrenchment compensation. This irked Shri Raju Kumar Sah, who raised an industrial dispute before the Conciliation Officer. His claim was contested by the management, hence conciliation proceedings ended into a failure. Since 45 days, from the date of moving an application before the Conciliation Officer, expired Shri Raju Kumar Sah opted to file his dispute before the Tribunal using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Claim statement was filed by Shri Raju Kumar Sah pleading that he was engaged as a casual labour/daily wager by the management on 04.08.2006 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked upto to 30.12.2006. He was again engaged on 15.03.2007. With an ulterior motive, the management gave break on 01.01.2007 to 14.3.2007 and again engaged him on 15.03.2007. He worked till 31.03.2009. He was regular, sincere, obedient and hardworking in his duties, which fact is corroborated by letter dated 22.12.2008 issued by the management. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 31.03.2009.

3. On 02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.1138/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittantly. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan No.POD/ 405/RC dated 29.07.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheque for Rs.10,020.00 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdraw on 23.5.2010. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, following issues were settled:

(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as resjudicata?

(4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?

(5) Whether the claimant is entitled to relief of reinstatement in service?

7. To discharge onus resting on him, the claimant examined himself and closed his evidence. The management examined Ms.Suresh Singhal to substantiate its case.

8. Arguments were heard at the bar. Ms.Madhvi K Deva, authorized representative, advanced arguments on behalf of the claimant. Shri Atul Bhardwaj, authorised representative, raised submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

Issue No. 1

9. At the outset, the management contends that it is not an industry within the meaning of section 2(j) of the Act. It is presented that management is a statutory body under the Indian Patents Act, 1970 created for granting patents on new non-obvious inventions. The said activity is relatable to sovereign functions and cannot be termed as industry. Shri Bhardwaj concludes that there is no profit motive in granting patents, which fact would dispel the contention that activities of the management fall within the ambit of industry. On the other hand the claimant asserts that the activities performed by the management answer the definition of term "industry", as enacted by the Act.

10. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the term 'industry'. The Act defines the term 'industry' as follows:

> "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

11. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

12. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

> "I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.
>
> (a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.
>
> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanrajgiriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

13. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an 'industry". Except the facts referred above, the management

nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

14. Whether granting of patents on new non obvious inventions would fall within the ambit of material services to the society? Legal precedents would through light on the above proposition. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were held to be "material services" to the textile industry hence the Association answered the definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry' if other tests are not satisfied.

15. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

16. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can either be called business, trade or manufacturing or it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

17. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him

fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

19. As projected by the management, it grants patents on new non-obvious inventions, which act answers ingredents of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is does not fall within the ambit of "industry" as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of "industry" as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In his affidavit Ex.WW1/A, tendered as evidence, the claimant highlights that he was engaged as a casual labour/daily wager from 04.08.2006 initially for a period of 89 days. He was deputed by the management for carrying out works relating to shifting of office from Patel Nagar to Dwarka. He continued to perform his duties with utmost dedication and to entire satisfaction of his superiors. Ms.Suresh Singhal unfolds in her affidavit Ex.MW1/A, tendered as evidence, that the management has been engaging services of daily wagers for various jobs. Claimant was engaged on daily wage basis. From tone and tenor of her testimony it is obvious that the claimant was engaged by the management for manual work.

21. When facts unfolded by the claimant and those detailed by Ms.Suresh Singhal are appreciated in the light of the documents proved by the parties, it came over the record that the claimant was engaged as a casual labour for manual work. Question for consideration would be as to whether the claimant can be termed as workman? For an answer to this proposition, it would be expedient to have a glance on definition of the term 'workman', enacted by section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

22. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with

an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

23. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

24. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that , for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

25. When facts of the present controversy are assessed on the above proposition of law, it emerges that the claimant was engaged as casual labour to do manual unskilled work. The management nowhere disputes that the claimant was performing manual unskilled work, while working as casual labour. Work performed by the claimant clothes him with the status of a workman, as projected under section 2(s) of the Act. Therefore, these facts make me to comment that the claimant was a workman within the meaning of section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 3

26. Question for consideration comes as to whether order dated 21.04.2010 passed by the CAT operate as resjudicata? Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order, passed by the CAT, precludes the claimant from raising that very issue before this Tribunal. For an answer legal principles are to be taken note of. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Ghosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res- judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

27. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which

was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either –(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

30. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contract, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under section 10 of the Act.

31. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

32. Whether CAT is competent to try an industrial dispute? Answer to this proposition would emerge out of section 14 of the Administrative Tribunal Act, 1985, which contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the Union. For sake of convenience, provisions of sub-section (1) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

> "14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall

exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All India Service; or

(ii) a person, not being a member of an All India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub- clause (ii) or sub- clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment".

33. Section 28 of the Administrative Tribunals Act, 1985 projects that an Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

"28. 'On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, on plain reading of Section 28 of the aforesaid Act, it emerges that the CAT exercises concurrent jurisdiction with an Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person, who falls within the ambit of workmen as defined under the Act.

35. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in Premier Automobiles (1976(1) SCC 496). On consideration of catena of decisions on the subject, the Apex Court enunciated following principles:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the

dismissal of an unsponsored workman which in view of the provision of law contained in Section 2-A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above."

36. While analysing principles adumbrated in Premier Automobiles (supra), the Apex Court in Rajasthan State Road Transport Corporation (1995(5) SCC 75) summarised those principle as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

37. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in A. Padmavalley etc. (1991(1) SLR 245) wherein proposition of law laid in Premier Automobile (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it

was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

(i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(iii) The powers of the Adminstrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(iv) The interpretation given to the term 'arrangement in force' by the Jabalpur Bench in Rammoo's case is not correct."

38. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such order passed by it in OA No.1138 of 2010 on 21.04.2010 would not operate as res judicata. Submissions made by Shri Bhardwaj, to the effect that the claimant cannot re-agitate the very issue, which was adjudicated by the CAT vide order dated 21.4.2010, are untenable. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 4.

39. For seeking protection under Section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of Section 25-B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

40. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman, who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

41. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, sundays and saturdays for which full wages are paid. The Apex Court was confronted with such a proposition

in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

42. The claimant unfolds that he was initially engaged by the management on 04.08.2006 as daily wager. He continuously performed his duties till 31.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/5. According to her, sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/5 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 252 days. He had rendered 201 days service in preceding 12 months from April, 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April, 2008 to March, 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25-B of the Act. Issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 5

43. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

44. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

45. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

46. On turning to fact it came to light that the claimant projects that his services were dispensed with on 30.03.2009. In that regard, Ms.Singhal projects that the claimant was not engaged any further with effect from 30.03.2009. It is not the case of the management that the claimant was well aware that his engagement was for a specified period and would come to an end on expiry of the period, so specified in his engagement order. Exception contained in sub-clause (bb) of sub-section (oo) of section 2 of the Act is not applicable to his case. For applicability of sub-clause (bb) of sub-section (oo) of section 2 of the Act the management is under an obligation to establish following counts:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

47. When facts unfolded by Ms.Singhal are scanned, it came to light that the claimant was not employed in a project or a scheme of temporary duration. He was not employed on a contract of specified duration. As per the case of the management, he was a daily wager simpliciter. These facts make it clear that action of disengaging the claimant does not fall within the exception created by either main clause or exception contained in second limb of section 2(oo) of the Act. Therefore, dispensing with services of the claimant for any reason whatsoever would amount to retrenchment.

48. Admittedly, no notice for a period of one month or pay in lieu thereof was given to the claimant, as testified by Ms. Singhal. No retrenchment compensation was paid to him at that time. Thus it is evident that services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

49. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here–can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

50. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was rule thus.

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee, whose members are fair and impartial, through a written examination or

interview or some other rational criteria for judging the inter se merit of candidates, who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

51. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

52. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

53. Whether the claimant was back door entrant ? Answer lies in negative. As per facts, unfoleded by the management, name of the claimant was sponsored by the employment exchange. Provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts obligation on an employer to notify vacancies to an employment exchange, before filling vacancies in any employment in its establishment. Section 3 of that Act enlists certain vacancies to which it does not apply. Provisions of the said section are detailed as follows:

"3. Act not to apply in relation to certain vacancies.-

(1) This Act shall not apply in relation to vacancies.-

(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

(b) in any employment in domestic service ;

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament.

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month".

54. Clause (i) of Section 2 of that Act gives definition of "unskilled office work" wherein an employee doing any routine work or unskilled work has been included. For convenience sake the said definition is extracted thus:

"Unskilled office work" means work done in an establishment by any of the following categories of employees, namely, -

(1) daftri,

(2) jamadar, orderly and peon;

(3) dusting man or farash;

(4) bundle or record lifter ;

(5) process server;

(6) watchman;

(7) sweeper;

(8) any other employee doing any routine or unskilled work which Central Government may, by notification in the Official Gazette, declare to be unskilled office work".

55. As projected above provisions of that Act are not applicable to vacancies relating to "unskilled office work". The object of the aforesaid Act is not to restrict, but to enlarge field of choice so that employer may choose best and most efficient and to provide an opportunity to the worker to have his claim for appointment considered without having to knock at every door for employment. Office Memorandum No.114/11/64-Estt.(D) dated 21.3.64 was issued by Ministry of Home Affairs, Government of India, emphasizing that all vacancies in Central Government establishments, other than those filled through the Union Public Service Commission, should be notified to the nearest employment exchange and no department or office should fill any vacancy by direct recruitment unless the employment exchange certified that they were unable to supply suitable candidates. Office memorandum No.14024/2/77-Estt.(D) dated 12.4.77 was issued by Department of Personnel and Training laying stress on proposition that all vacancies arising in Central Government offices/establishments (including quasi government institutions and statutory organizations) irrespective of the nature and duration other than filled from the U.P.S.C. are not only to be notified, but also to be filled through the employment exchange alone and other permissible source of recruitment can be taped only if employment exchange concerned issued a non availability certificate. There can be no deviation from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the department of Personnel and Training and Ministry of Labour.

56. A gloss was put on these instructions by the Apex Court in N. Hargopal [1987(3) SCC 308] wherein it was ruled that the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which functions under the authority of statute. In the absence of any statutory prescription the statutory authority may, however, adopt and follow such instructions if it thinks fit. The court concluded that in case of public appointment it is necessary to eliminate arbitrariness, favourtism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes a grave element of arbitrariness is certainly introduced. The Court went on to say that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Article 14 and 16 of the Constitution. Hence it emerges that above instructions were affirmed by the Apex Court and the management was bound to follow those instructions, in making an engagement for the position of unskilled office work.

57. These instructions were complied with by the management when claimant was engaged by it. Thus engagement of the claimant through employment exchange was in consonance with the laid down procedure. It can not be said that he was a back door entrant on the job. Hence I say that the management could not show any case where relief of reinstatement should be denied to the claimant.

58. As regards back wages, no evidence has been brought to the effect that the claimant remained unemployed. Therefore it seems not to be a case of grant of full back wages. However no principles are available to assess as to what amount of back wages should be awarded. Principles for award of compensation is available in some precedents, which are taken in to account. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future…. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.
>
> Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best

that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs.50,000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75,000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal [1985 Lab.I.C.1225] a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs.65,000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

61. As held in preceding sections the claimant could show a case of reinstatement in the service of the management with continuity. Accordingly it is ordered that he shall be reinstated in service by the management. Relying on principles of law laid for grant of compensation and on consideration of facts in entirety it is held that the claimant shall get 40% of his last drawn wages as back wages for the period of interregnum. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1-4-2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1358.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट ए एच क्यू ए जी ब्रांच (आवेस) नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 87/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-14012/24/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 16th April, 2014

S.O. 1358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 87/2006) of the Central Government Industrial Tribunal/Labour Court Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commandant AHQ AG Branch (AWES), New Delhi and other and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-14012/24/2006-IR(DU)]

P. K. VENUGOPAL, Section Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 87/2006

भरत पाण्डेय
पीठासीन अधिकारी

रेफरेन्स नं.-L- 14012 /24/2006–IR(DU)

दिनांक 09/11/2006

Shri Ram Kishan Choudhary
S/o. Shri Ram Rakh Choudhary
R/o Vill. Mundia Khurd,
The Chaksu, Distt. Jaipur (Rajasthan)

V/s

1. The Commandant, AHQ.
AG Branch (AWES), Division Hqr,
New Delhi.

2. The Principal,
Army School, Jaipur Cantt.,
Opp. Sub Area Officer,
Rajendra Marg, Khatipura
Jaipur (Rajasthan)

प्रार्थी की तरफ से : श्री प्रहलाद शर्मा - एडवोकेट

अप्रार्थी की तरफ से : श्री प्रभात भटनागर - एडवोकेट

पंचाट

दिनांक : 27.02.2014

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उप–धारा 1 खण्ड (घ) के अन्तर्गत दिनांक 21.02.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

2 "Whether the action of the management of Army School, Jaipur in terminating the service of their Shri Ram Kishan Choudhary w.e.f. 06.10.2003 is legal and justified? If not, to what relief the workman is entitled to?"

3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्तः प्रार्थी श्रमिक का कथन है कि उसकी नियुक्ति आर्मी स्कूल, जयपुर कैन्ट, राजेन्द्र मार्ग, खातीपुरा रोड, जयपुर में माली के पद पर दिनांक 06.11.2001 को 1500 रू. मासिक पारिश्रमिक पर हुई। प्रार्थी नियुक्ति के समय से ही विपक्षी के संस्थान में अपनी सेवायें नियमित, मेहनत व लगन से देता आ रहा था तथा उसकी सेवायें सदैव सन्तोषप्रद रही और उसके कार्य के सम्बन्ध में कोई शिकायत नहीं थी। प्रार्थी श्रमिक के वेतन में समय–समय पर बढ़ोतरी भी की जाती रही और श्रमिक के भविष्य निधि की राशि भी जनवरी 2002 से जमा की गयीं।

4. आगे श्रमिक का कथन है कि उसकी सेवाओं से प्रसन्न होकर अगस्त 2003 से उसे 3050 रू. प्रतिमाह वेतन एवं 128 रू. प्रतिमाह मंहगाई भत्ते का भुगतान किया जाने लगा। प्रार्थी श्रमिक ने माली के पद पर 2 वर्ष से ज्यादा निरन्तर कार्य करने के बाद उसकी सेवायें नियमित करने के लिये प्रबन्धन के समक्ष प्रार्थना–पत्र प्रस्तुत की और उक्त पद की नियमित वेतन श्रृंखला भी प्रदान किये जाने की प्रार्थना की तो विपक्षी संस्थान द्वारा बिना कारण बताये दिनांक 06.10.2003 को उसे मौखिक आदेश से सेवा–मुक्त कर दिया गया।

5. प्रार्थी श्रमिक का यह भी कथन है कि उसके द्वारा नियमित किये जाने हेतु प्रार्थना–पत्र प्रस्तुत करने के कारण विपक्षीगण ने बिना कोई सुनवाई का मौका दिये और बिना नोटिस दिये सेवा से मुक्त किया जो औद्योगिक विवाद अधिनियम के प्राविधान के नियम के विपरीत है। प्रार्थी श्रमिक का कथन है कि उसने एक कैलेण्डर वर्ष में लगातार 240 दिन से अधिक काम किया है तथा विधि विरूद्ध अपनी सेवा मुक्ति के सम्बन्ध में कई बार विपक्षीगण से सेवा में वापस लेने की प्रार्थना की लेकिन उसे सेवा में वापस नहीं लिया गया एवं विपक्षीगण का संस्थान औद्योगिक विवाद अधिनियम की धारा 2(जे) के अर्न्तगत परिभाषित उद्योग की श्रेणी में आता है। विपक्षीगण द्वारा प्रार्थी के सेवा मुक्ति के समय औद्योगिक विवाद अधिनियम की धारा 25(जी) एवं 25(एच) के प्रावधानों का ध्यान नहीं रखा गया। प्रार्थी श्रमिक की तुलना में उसके कनिष्क व्यक्ति भी संस्थान में कार्यरत थे और प्रार्थी के वरिष्ठ होने के बावजूद उसे सेवा से मुक्त कर दिया गया। विपक्षीगण द्वारा प्रार्थी की तुलना में कनिष्क श्रमिकों को काम पर रखा गया और स्थायी कर दिया गया जबकि प्रार्थी श्रमिक के बाद सेवा में आने वाले श्रमिकों को पहले पृथक करना था। यह भी कहा गया है कि प्रार्थी श्रमिक को सेवा से मुक्त करने के बाद लक्ष्मण जाट को प्रार्थी श्रमिक के सदृश पद पर रखा गया ।

6. यह भी कहा गया है कि विपक्षी संस्थान द्वारा प्रार्थी श्रमिक को सेवा–मुक्त करने के पूर्व किसी प्रकार की वरिष्ठता सूची औद्योगिक विवाद नियम (केन्द्रीय) 1957 के नियम 77 एवं 78 के अन्तर्गत जारी नहीं की गयीं, प्रार्थी सेवा मुक्ति की तिथि 06.10.2003 से बेरोजगार है और आर्थिक परेशानी में जीवन व्यतीत कर रहा है। अतः उसने प्रार्थना की है कि उसकी क्लेम स्वीकार की जाय और सेवा मुक्ति के आदेश को अवैध घोषित किया जाय और विगत वेतन एवं समस्त परिलाभ सहित सेवा में वापस लिये जाने का आदेश पारित किया जाए।

7. विपक्षीगण की तरफ से स्टेटमेन्ट ऑफ क्लेम के विरूद्ध प्रारम्भिक आपत्ती प्रस्तुत कर यह कहा गया है कि उनकी संस्था एक शैक्षणिक संस्थान है जो केन्द्रीय सोसायटी रजिस्ट्रेशन अधिनियम 1860 के अन्तर्गत दिनांक 29.04.83 को पंजीकृत है। विपक्षीगण का विद्यालय आर्मी स्कूल, जयपुर न तो सरकारी स्कूल है और न ही सरकार द्वारा अनुबन्धित स्कूल की श्रेणी में आता है यह विद्यालय भारत सरकार के रक्षा मन्त्रालय के अन्तर्गत नहीं आता है। आर्मी स्कूल, जयपुर के कर्मचारियों का चयन, कार्यकाल इत्यादि आर्मी

वेलफेयर एजुकेशन सोसायटी द्वारा समय–समय पर प्रतिपादित नियमों एवं रेग्युलेशन के अन्तर्गत होता है। आर्मी वेलफेयर एजुकेशन सोसायटी के दिनांक 16.6.2006 के रूल्स एवं रेग्यूलेशन के संशोधन संख्या 51/2006 के अनुसार राजस्थान में स्थित ए. डब्ल्यू.ई.एस. की सभी शैक्षणिक संस्थाएं, राजस्थान गैर सरकारी शैक्षणिक संस्थाऐं अधिनियम 1989 एवं रूल्स 1993 के नियमों से संचालित होगी। अतः प्रार्थी श्रमिक के क्लेम के सुनवाई का क्षेत्राधिकार माननीय न्यायालय को नहीं है। प्रार्थी श्रमिक को सक्षम न्यायालय के समक्ष अपना वाद प्रस्तुत करना चाहिए।

8. उक्त क्षेत्राधिकार से सम्बन्धित प्रारम्भिक आपत्ति के बाद विपक्षीगण ने स्टेटमेन्ट ऑफ क्लेम का प्रस्तरवार जवाब प्रस्तुत कर स्टेटमेन्ट ऑफ क्लेम के प्रस्तर 1,2,3,4,5,6,7,8,9,10 और 11 के कथन को इन्कार करते हुए उसे असत्य और मनगढ़त कहा है। अतिरिक्त कथन में प्रस्तर 9 के सम्बन्ध मे यह कहा गया है कि इस मामले में धारा 25 (जी) लागू नहीं होता है क्योंकि प्रार्थी श्रमिक स्वंय अपनी इच्छा से नौकरी छोड़कर चला गया था। प्रस्तर 10 के सम्बन्ध मे कहा गया है कि औद्योगिक विवाद अधिनियम 1947 की धारा 25 (एच) लागू नहीं होता है और इस सम्बन्ध मे प्रार्थी श्रमिक का कथन बेबुनियाद है कि उससे कनिष्क श्रमिक को नौकरी पर रख लिया गया और स्थायी कर दिया गया। यह भी कहा गया है कि लक्ष्मण जाट को दैनिक मजदूरी पर अंशकालीन श्रमिक के रूप में व आवश्यकतानुसार रखा गया।

9. यह भी कहा गया है कि नियम 77 व 78 के अधीन अंशकालीन श्रमिकों की वरिष्ठता सूची बनाया जाना जरूरी नहीं है और प्रार्थी श्रमिक द्वारा नौकरी छोडकर चले जाने के बाद लक्ष्मण जाट को आवश्यकतानुसार अंशकालीन तौर पर रखा गया था इसलिए श्रमिक का यह कहना गलत व अमान्य है कि किसी प्रकार की कोई वरिष्ठता सूची तैयार नहीं की गई। यह भी कहा गया है कि याचिका के प्रस्तर 11 में प्रार्थी श्रमिक का यह कहना गलत है कि वह बेरोजगार है बल्कि विपक्षीगण के संस्था को छोड़ने के पश्चात वह सन्तोकबा दुलर्भजी अस्पताल में बतौर सुरक्षा गार्ड में कार्यरत है।

10. श्रमिक के प्रस्तर 1 लगायत 6 में प्रस्तुत कथन के विरूद्ध विपक्षीगण ने अतिरिक्त कथन में यह उल्लेख किया है कि प्रार्थी श्रमिक को कभी कोई नियुक्ति पत्र नहीं दिया गया और न ही विपक्षी के संस्थान में माली के पद पर नियुक्ति दी गई। प्रार्थी श्रमिक दैनिक अंशकालीन वेतन भोगी श्रमिक के रूप में 50 रू. प्रतिदिन की मजदूरी पर मौखिक रूप से रखा गया था। विपक्षी के संस्थान में माली का कोई पद अनुमोदित (Authorised) नहीं है। आवश्यकतानुसार समय–समय पर माली/ग्राउण्ड़ मैन, सफाई कर्मचारी, कारपेन्टर, प्लम्बर एवं चौकीदार को विद्यालय के कार्य के लिये अंशकालीन श्रमिक के रूप में रख लिया जाता है। यह भी कहा गया है कि प्रार्थी की सेवायें सन्तोषप्रद नहीं रही और समय–समय पर मौखिक रूप से अच्छा कार्य न करने तथा अन्य कर्मचारियों के साथ अभद्र व्यवहार करने की हिदायतें दी जाती रही है। यह भी कहा गया है कि प्रार्थी की अनुपस्थिति का वेतन समय–समय पर काटा गया है जो उसको दी जाने वाली मासिक वेतन पर्ची से विदित होता है जिसे स्वंय प्रार्थी ने प्रस्तुत किया है। प्रार्थी श्रमिक की वेतन की बढ़ोतरी के सम्बन्ध में यह कहा गया है कि अन्य अंशकालीन श्रमिकों की वेतन में बढ़ोतरी के साथ ही प्रार्थी श्रमिक को वेतन एवं मंहगाई भत्ते में बढ़ोतरी की गयी थी और यह बढ़ोतरी किसी विशेष अनुकम्पा या कारण पर आधारित नहीं थी। यह भी कहा गया है कि प्रार्थी श्रमिक का यह कथन निराधार एवं असत्य है कि उसने कोई प्रार्थना–पत्र अपनी सेवा को नियमित करने अथवा नियमित वेतनमान दिये जाने के लिये प्रस्तुत किया था और उक्त आवेदन दिये जाने के कारण उसे सेवा से हटा दिया गया बल्कि सही तथ्य यह है कि दिनांक 10.06.2003 को प्रार्थी श्रमिक स्वयं कार्य छोड़कर चला गया था और उसके बाद संस्था से न कोई पत्र–व्यवहार किया और न ही संस्था में स्वयं उपस्थित हुआ ।

11. याचिका के प्रस्तर 4 के कथन के विरूद्ध विपक्षीगण का कथन है कि श्रमिक को विद्यालय से कार्यमुक्ति नही दी गई और बिना बताए अनुपस्थित रहने के कारण पुछने पर उसने अपने वरिष्ठ अधिकारियों से अभद्र व गैर जिम्मेदाराना ढंग से वार्तालाप किया और अपनी इच्छा से यह कह कर चला गया कि अपनी इच्छा से वह नौकरी नहीं करना चाहता, उसका हिसाब कर दिया जाय। याचिका के प्रस्तर 5 में लगातार 240 दिन कार्य करने के तथ्य से इन्कार करते हुए यह कहा गया है कि अंशकालीन श्रमिक होने के कारण वह सभी कार्य करता था और उसके अनुपस्थित होने पर अनुपस्थिति के अनुसार वेतन से कटौती की जाती थी।

12. गैर कानूनी ढ़ंग से सेवा मुक्ति किये जाने और पुनः सेवा में न लिये जाने के याची के कथन के सम्बन्ध में विपक्ष का कथन है कि उसे संस्था द्वारा सेवा मुक्त नहीं किया गया बल्कि वह स्वंय छोड़कर गया और पुनः सेवा में लेने के लिये संस्था से कोई निवेदन नहीं किया ।

13. विपक्षीगण के वादोत्तर के विरूद्ध प्रतिउत्तर प्रस्तुत कर प्रारम्भिक आपत्ति को अस्वीकार किया गया है और कहा गया है कि वर्तमान प्रकरण में औद्योगिक विवाद अधिनियम 1947 के प्राविधान लागू होते है अतः आपत्ति ग्रहण किये जाने योग्य नहीं है। संशोधन संख्या 51/2006 के विरूद्ध प्रतिउत्तर में यह कहा गया है कि संशोधन के प्राविधान श्रमिक के मामले मे लागू नही होते क्योंकि उनके संशोधन में यह उल्लेख नहीं है कि वे भूतलक्षी प्रभाव से लागू होंगे। यह भी कहा गया है कि विपक्षीगण न्यायालय का क्षेत्राधिकार का मामला उठाने से बिवन्धित है क्योंकि समझौता अधिकारी के समक्ष स्वंय विपक्षीगण ने स्वीकार किया है कि मामला सहायक श्रम आयुक्त (केन्द्रीय) एवं समझौता अधिकारी जयपुर के कार्यक्षेत्र से सम्बन्धित है। शेष प्रति उत्तर में स्टेटमेन्ट ऑफ क्लेम में प्रस्तुत किये गये कथनों की पुनरावृत्ति की गयी है और वादोत्तर के कथन से इन्कार किया गया है।

14. स्टेटमेन्ट ऑफ क्लेम के समर्थन में प्रार्थी श्रमिक की तरफ से प्रलेखीय साक्ष्य के रूप में प्रदर्श– डब्लयू–1 विपक्षीगण की तरफ से समझौता अधिकारी के समक्ष आपत्ति की फोटोप्रति, तथा प्रदर्श W-2 लगायत प्रदर्श W-22 वेतन पर्ची प्रस्तुत है। इसके अतिरिक्त प्रार्थी श्रमिक रामकिशन चौधरी की साक्ष्य में शपथ–पत्र प्रस्तुत है जिनकी विपक्ष द्वारा प्रतिपरीक्षा की गयी है।

15. विपक्षीगण की तरफ से प्रलेखीय साक्ष्य में प्रदर्श-1 लगायत प्रदर्श 6 प्रस्तुत है। इसके अतिरिक्त विपक्षीगण की तरफ से श्री गिरधारी सिंह कार्यालय अधीक्षक, आर्मी पब्लिक स्कूल, जयपुर की साक्ष्य में शपथ–पत्र प्रस्तुत है। शपथ–पत्र में प्रदर्श 1 लगायत प्रदर्श 4 का उल्लेख है प्रदर्श 5 रामकिशन की उपस्थिति रजिस्टर की प्रमाणित प्रति है जो अक्टूबर 2003 से सम्बन्धित है और प्रदर्श 6 अक्टूबर 2003 माह के वेतन का प्रमाणित विवरण है। इस विवरण में प्रार्थी श्रमिक रामकिशन चौधरी सहित विद्यालय के सभी कर्मचारियों के वेतन का विवरण है। श्री गिरधारी सिंह की प्रार्थी श्रमिक की तरफ से प्रतिपरीक्षा की गयी है।

16. उक्त के अतिरिक्त प्रार्थी श्रमिक की तरफ से सूची से जनवरी 2002 से अगस्त 2003 तक के वेतन भुगतान से सम्बन्धित वाउचर की फोटोप्रति प्रस्तुत है कोई अन्य प्रलेखीय या मौखिक साक्ष्य पत्रावली पर उपलब्ध नहीं है।

17. मैने उभयपक्ष के विद्वान अधिवक्ता की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया।

18. प्रार्थी श्रमिक की तरफ से यह बहस की गई है कि विपक्षीगण ने विधि विरूद्ध प्रार्थी श्रमिक को सेवा से हटा दिया है प्रार्थी श्रमिक ने 240 दिन तक एक वर्ष में अविच्छिन सेवा की है लेकिन धारा 25 (एफ) औद्योगिक विवाद अधिनियम 1947 के प्राविधान का पालन नहीं किया गया है। सेवा से मुक्त करने से पूर्व प्रार्थी श्रमिक को न नोटिस दिया गया है और न मुआवजा दिया गया है अतः प्रार्थी की सेवा समाप्ति का आदेश निरस्त किये जाने योग्य है और विगत वेतन व परिलाभों के साथ प्रार्थी श्रमिक सेवा में पुर्नस्थापित होने योग्य है यह बहस भी की गयी है कि सेवा से हटाये जाने से पूर्व कोई वरिष्ठता सूची तैयार नहीं की गयी है जिससे नियम 77 व 78 का उल्लंघन है और प्रार्थी को सेवा से हटाकर तुलना में उससे कनिष्क कर्मचारियों को सेवा में रखा गया है एवं प्रार्थी श्रमिक को सेवा से हटाये जाने के बाद लक्ष्मण जाट को प्रार्थी के सदृश पद पर नियुक्त किया गया है इस प्रकार धारा 25 (जे) व धारा 25 (एच) का उलंघन किया गया है अतः सेवा समाप्ति का आदेश निरस्त किया जाय और प्रार्थी श्रमिक को सेवा में पुर्नस्थापित किया जाय।

19. प्रार्थी श्रमिक पक्षकार की तरफ से उक्त बहस के विरूद्ध विपक्षीगण के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि श्रमिक को विपक्षीगण के संस्थान से कभी सेवा से मुक्त नहीं किया गया बल्कि वह स्वंय कार्य छोड़कर चला गया इसलिये धारा 25 (एफ) के प्राविधान के पालन की कोई विधिक आवश्यकता इस मामले में नहीं है। यह बहस भी कि गयी है कि दैनिक मजदूरी पर अंशकालीन सेवा के लिये श्रमिक को विद्यालय में रखा गया था और अंशकालीन होने के कारण उसे विद्यालय में सभी प्रकार का कार्य करने के लिये उसे दिया जाता था एवं विद्यालय में माली का कोई पद सृजित नहीं है। यह बहस भी की गयी है कि दैनिक वेतन भोगी श्रमिक के मामले में वरिष्ठता सूची बनाने की कोई विधिक आवश्यकता नहीं है इसलिये नियम 77 व 78 का उल्लंघन का प्रश्न नहीं उठता है जैसा कि माननीय सर्वोच्च न्यायालय ने 2006, एस.सी.सी. (एल. एण्ड एस.) पृष्ठ 38 सुरेन्द्र नगर, जिला पंचायत– अपीलार्थी बनाम दह्याभाई अमरसिंह – प्रत्यर्थी में अवधारित किया है। श्री लक्ष्मण जाट को सेवा में लिये जाने के सम्बन्ध में यह बहस की गयी है कि उसे आवश्यकतानुसार अंशकालीन श्रमिक के रूप में रखा गया और चूंकि प्रार्थी श्रमिक स्वंय कार्य छोडकर चला गया था और उसके पश्चात न विद्यालय में आया और न कभी विद्यालय से पत्राचार किया अतः धारा 25 (जे) व (एच) के प्राविधान भी लागू नहीं होते। यह बहस भी कि गयी है कि वादोत्तर प्रस्तुति के समय श्रमिक सन्तोकबा दुलर्भजी अस्पताल में बतौर सुरक्षा गार्ड कार्यरत था। विपक्षीगण की तरफ से महत्वपूर्ण बिन्दु क्षेत्राधिकार के सम्बन्ध में भी उठाया गया है और यह बहस कि गयी है कि इस न्यायाधिकरण को प्रार्थी श्रमिक द्वारा प्रस्तुत मुकदमे की सुनवाई का न्यायिक क्षेत्राधिकार प्राप्त नहीं है।

20. उभयपक्ष के अभिकथनों तथा उसके समर्थन में प्रदर्श साक्ष्य एवं पक्षकारों की उक्त बहस से निम्न महत्वपूर्ण वाद–बिन्दु निणयार्थ उत्पन्न होते है :–

1. क्या औद्योगिक न्यायाधिकरण सह लेबर कोर्ट, जयपुर को प्रस्तुत मुकदमें की सुनवाई का क्षेत्राधिकार प्राप्त है ?
2. क्या प्रार्थी श्रमिक द्वारा कथित सेवा समाप्ति की तिथि 6.10.2003 के पूर्व कैलेण्डर वर्ष में 240 दिन तक अविच्छिन्न सेवा की गयी है ?

21. उभयपक्ष द्वारा अपनी बहस के समर्थन में निम्न विधिक दृष्टान्त प्रस्तुत किये गये हैं।

प्रार्थी श्रमिक की तरफ से प्रस्तुत दृष्टान्त :–

1. नरोत्तम केला बनाम राजस्थान राज्य एवं अन्य डब्ल्यू.एल.सी. (राज.) 2001,(1) पृष्ठ 667

विपक्षीगण की तरफ से प्रस्तुत दृष्टान्त

1. डब्ल्यू.एल.सी.(राज.) 2001,(4) पृष्ठ 295,राजस्थान उच्च न्यायालय (जयपुर पीठ), बाल विद्या मन्दिर, चुरू एवं अन्य – याचीगण बनाम राजस्थान राज्य एवं अन्य – प्रत्यर्थीगण

2. डब्ल्यू.एल.सी. राज. 2002, (3) पृष्ठ 74, राजस्थान उच्च न्यायालय (जयपुर पीठ), यूनियन ऑफ इण्डिया एवं अन्य–अपीलार्थीगण बनाम दिगम्बर जैन सैकण्डरी स्कूल एवं 22 अन्य

3. 2006, एस.सी.सी. (एल. एण्ड एस.) पृष्ठ 38, सुरेन्द्र नगर, जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमरसिंह – प्रत्यर्थी

22. जहां तक प्रथम वाद–बिन्दु के निर्णय का प्रश्न है यह वाद–बिन्दु क्षेत्राधिकार से सम्बन्धित है। विपक्षी के विद्वान अधिवक्ता द्वारा यह बहस की गयी है कि औद्योगिक न्यायाधिकरण–सह–लेबर कोर्ट, जयपुर को इस मामले की सुनवाई का क्षेत्राधिकार प्राप्त नहीं है। याची के विद्वान अधिवक्ता ने उक्त बहस का प्रतिवाद करते हुए यह बहस किया है कि इस मामले में केवल औद्योगिक न्यायाधिकरण – सह–लेबर कोर्ट, जयपुर को ही सुनवाई का क्षेत्राधिकार प्राप्त है तथा इस तथ्य को स्वयं विपक्ष द्वारा समझौता अधिकारी के समक्ष लिखित रूप से स्वीकार किया गया है और केवल अनावश्यक विवाद को बढ़ाये जाने हेतु क्षेत्राधिकार का आधार लिया गया है। इस सम्बन्ध में याची पक्ष द्वारा प्रस्तुत अभिलेख डब्ल्यू–1 की तरफ न्यायालय का ध्यान आकृष्ट किया गया है। विपक्षीसाक्षी श्री गिरधारी सिंह की साक्ष्य में प्रस्तुत शपथ–पत्र में भी प्रस्तर 8 में यह उल्लेख किया गया है कि केन्द्रीय सोसायटी रजिस्ट्रेशन अधिनियम 1860 के अन्तर्गत विपक्षी का विद्यालय पंजीकृत संस्था होने के कारण विपक्षी के विरूद्ध यह परिवाद वर्तमान न्यायालय में पोषणीय नहीं है। विपक्ष द्वारा केन्द्रीय सोसायटी रजिस्ट्रेशन अधिनियम 1860 के किसी प्राविधान का उल्लेख नहीं किया गया है कि किस प्राविधान के अनुसार वाद–पोषणीय नहीं है। जहा तक प्रदर्श डब्ल्यू–1 का प्रश्न है यह अभिलेख प्रार्थी पक्ष की तरफ से पत्रावली पर प्रस्तुत है जिसके अवलोकन से यह विदित है कि राजस्थान सरकार श्रम विभाग, सम्भागीय समूह, श्रम आयुक्त हसनपुरा, जयपुर के समक्ष सुलह समझौता को कार्यवाही में विपक्ष द्वारा प्रस्तुत आपत्ति है जिसमें विपक्षीगण ने स्वंय स्वीकार किया है कि अप्रार्थी एक शैक्षणिक संस्थान है जिसका पंजिकरण केन्द्रीय सोसायटीज रजिस्ट्रेशन अधिनियम 1860 के अन्तर्गत दिनांक 29.4.1983 को किया गया है जिसका पंजीयन नं. एस/13459 है एवं प्रार्थी द्वारा उठाया गया औद्योगिक विवाद सहायक श्रम आयुक्त केन्द्रीय एवं समझौता अधिकारी, जयपुर के कार्यक्षेत्र से सम्बन्धित है। आपत्ति का प्रासंगिक प्रस्तर निम्न है:–

> ''1. यह कि अप्रार्थी एक शैक्षणिक संस्था है। जिसका पंजिकरण केन्द्रीय सोसायटीज रजिस्ट्रेशन अधिनियम – 1860 के अन्तर्गत दिनांक 29.04.1983 को किया गया है। जिसका पंजिकृत नं. एस/13459 है। प्रार्थी द्वारा उठाया गया औद्योगिक विवाद सहायक श्रम आयुक्त (केन्द्रीय) एवं समझौता अधिकारी, जयपुर के कार्यक्षेत्र से सम्बन्धित है।''

23. उक्त आपत्ति में स्वंय विपक्ष ने यह स्वीकार किया है उनकी संस्था उपरोक्त वर्णित अधिनियम 1860 के अन्तर्गत पंजीकृत है और सुनवाई का क्षेत्राधिकार सहायक श्रम आयुक्त को है जो समझौता अधिकारी की हैसियत से पक्षकारों के बीच सुलह समझौता के लिए मामले की सुनवाई कर सकते हैं। यहाँ पर यह तथ्य विशेष उल्लेखनीय है कि विपक्षीगण का संस्थान एक शैक्षणिक संस्थान है जो ''उद्योग'' की परिभाषा से आच्छादित है और प्रार्थी श्रमिक ''कर्मकार'' की परिभाषा से आच्छादित है। ऐसी स्थिति में इस मामले में माननीय सर्वोच्च न्यायालय द्वारा 1988, सुप्रीम कोर्ट केसेज (एल.एण्ड़ एस.), पृष्ठ 892, मिस एम. सुन्दरमबाल–याचिनी बनाम गोवा, दमन एवं दिउ सरकार एवं अन्य–प्रत्यर्थीगण में दी गई व्यवस्था अत्यन्त प्रासंगिक एवं अनुकरणीय है।

24. मिस एम. सुन्दरमबाल बनाम गोवा, दमन एवं दिउ सरकार एवं अन्य में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि औद्योगिक विवाद अधिनियम 1947 की धारा 2 (एस) में परिभाषित ''कर्मकार'' की परिभाषा से ''अध्यापक'' आच्छादित नहीं है लेकिन धारा 2 (जे) में परिभाषित ''उद्योग'' की परिभाषा से ''शैक्षणिक संस्थान'' आच्छादित हैं। मिस ए.सुन्दरमबाल बनाम गोवा दमन एवं दिउ सरकार एंव अन्य के मामले में अपीलार्थिनी प्रत्यर्थी के विद्यालय में एक अध्यापक के रूप में नियुक्त थी जिसकी सेवाएं विद्यालय के प्रबन्धन के द्वारा पत्र दिनांकित 25.4.1975 के माध्यम से समाप्त कर दी गई। सेवासमाप्ति का आदेश समाप्त कराने में अनेक प्रयासों के विफल होने के बाद औद्योगिक विवाद अधिनियम के अन्तर्गत अपीलार्थिनी ने ''सुलह अधिकारी'' के समक्ष औद्योगिक विवाद उठाया। सुलह समझौता की कार्यवाही सफल नहीं हुई। यह पाकर कि अपीलार्थीनी कर्मकार की परिभाषा से आच्छादित नहीं है सरकार ने अपीलार्थिनी के मामले को श्रम न्यायालय में निर्णयार्थ भेजने से मना कर दिया। इसके बाद अपीलार्थीनी ने माननीय उच्च न्यायालय मुम्बई की पणजी पीठ, गोवा के समक्ष रिट याचिका प्रस्तुत की और यह याचना कि की शासन को निर्दिष्ट किया जाय कि उसके मामले को श्रम न्यायालय के समक्ष प्रेषित करे ताकि उसकी सेवा समाप्ति के आदेश कि वैद्यता का निर्णय हो सके। माननीय उच्च न्यायालय ने अपीलार्थिनी की रिट याचिका निरस्त की और यह अवधारित किया कि अपीलार्थिनी ''कर्मकार'' की परिभाषा से आच्छादित नहीं थी जिससे क्षुब्ध होकर अपीलार्थिनी ने माननीय सर्वोच्च न्यायालय के समक्ष अपील प्रस्तुत की। माननीय सर्वोच्च न्यायालय के समक्ष निर्णयार्थ निम्न दो प्रश्न अवतरित हुए : –

(1) क्या वह विद्यालय जिसमें अपीलार्थिनी कार्यरत थी वह ''उद्योग'' था ?

(2) क्या अपीलार्थिनी ''कर्मकार'' थी तथा उस ''उद्योग'' में नियुक्त थी ?

माननीय सर्वोच्च न्यायालय ने बैंगलोर वाटर सप्लाई एवं सिवरेज बोर्ड बनाम आर.राजप्पा सहित अपने अनेक पूर्व निर्णयों का संदर्भ लेते हुए यह अवधारित किया कि शैक्षणिक संस्थान जिसमें अपीलार्थिनी कार्यरत थी वह ''उद्योग'' की परिभाषा से आच्छादित था। अपीलार्थिनी के संदर्भ में माननीय सर्वोच्च न्यायालय ने निर्णय के प्रस्तर 10 में यह अवधारित किया है कि अपीलार्थिनी ''कर्मकार'' नहीं थी। इस प्रकार माननीय सर्वोच्च न्यायालय ने माननीय उच्च न्यायालय के निर्णय की पुष्टि की।

25. उक्त विधि व्यवस्था से यह स्पष्ट है कि विपक्षी की संस्था पर औद्योगिक विवाद अधिनियम के प्राविधान लागू होते हैं और

सोसायटीज रजिस्ट्रेशन अधिनियम 1860 का कोई प्राविधान इस मुकदमें की सुनवाई के सम्बन्ध में इस न्यायालय की अधिकारिता को प्रभावित नहीं करता है।

26. विपक्षीगण की तरफ से बाल विद्या मन्दिर, चुरू एवं अन्य – याचीगण बनाम राजस्थान राज्य एवं अन्य – प्रत्यर्थीगण तथा यूनियन ऑफ इण्डिया एवं अन्य – अपीलार्थीगण बनाम दिगम्बर जैन सैकण्डरी स्कूल एवं 22 अन्य–प्रत्यर्थीगण के प्रकरण में दी गई विधि व्यवस्था इस बिन्दु पर प्रस्तुत की गई है कि उक्त दोनों दृष्टान्तों में माननीय राजस्थान उच्च न्यायालय, जयपुर पीठ द्वारा प्रदत्त व्यवस्था के अनुसार इस मामले की सुनवाई का क्षेत्राधिकार इस न्यायालय को नहीं है। मैंने उक्त दोनों ही दृष्टान्तों का अत्यन्त सम्यक् एवं सूक्ष्म अवलोकन किया है। उक्त दोनों दृष्टान्तों से सम्बन्धित मामलों में विवाद यह था कि शैक्षणिक संस्थानों में कर्मचारियों की प्राविडेन्ड फण्ड की धनराशि का रख–रखाव क्षेत्रीय प्रोविडेन्ड फण्ड कमिश्नर, जयपुर द्वारा नियन्त्रित होना चाहिए या राज्य सरकार के कोषागार द्वारा उसका संचालन होना चाहिए। क्षेत्रीय प्रोविडेन्ड फण्ड कमिश्नर जयपुर, कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम 1952 के अन्तर्गत कार्यरत संस्था है जो केन्द्रीय संगठन है। राजस्थान गैर सरकारी शैक्षणिक संस्थायें अधिनियम,1989 के अन्तर्गत कार्यरत शैक्षणिक संस्थानों के कर्मचारियों की भविष्य निधि की धनराशि राज्य कोषागार में जमा की जाती थी। दिनांक 5.8.97 को राजस्थान सरकार के वित विभाग ने एक आदेश पारित किया ताकि इम्पलाईज प्राविडेण्ड फण्ड एवं मिसलेनियस प्रोविजन एक्ट 1952 का क्रियान्वयन किया जा सके। यह आदेश ऐसे शैक्षणिक संस्थानों पर लागू किया गया जिनके यहां 20 या 20 से ज्यादा कर्मचारी कार्यरत थे तथा जो अनुदानित गैर सरकारी शैक्षणिक संस्थान थे। दिनांक 24.8.98 को राज्य सरकार के वित विभाग ने कर्मचारियों की भविष्य निधि राशि जो कोषागार में जमा होती थी उसे प्राविडेण्ड फण्ड कमिश्नर, जयपुर को अन्तरित करने के लिये आदेश पारित किया। दिनांक 14.8.97 के राजस्थान सरकार ने एक आदेश पारित किया जिसके अनुसार गैर सरकारी अनुदानित शैक्षणिक संस्थानों को सी.पी.एफ. की धनराशि क्षेत्रीय प्रोविडेण्ड कमिश्नर के यहां जमा करने के लिये निर्देशित किया गया। विभिन्न विद्यालयों द्वारा दिनांक 14.8.1997 के आदेश को चुनोती दी गई। माननीय उच्च न्यायालय के समक्ष यह प्रश्न विचारणीय था कि कर्मचारी भविष्य निधि एक्ट् 1952 के प्राविधान लागू होंगे या राज्य द्वारा पारित राजस्थान गैर सरकारी शैक्षणिक संस्थायें अधिनियम 1989 के प्रावधान लागू होंगे ? राज्य सरकार द्वारा पारित सन् 1989 का अधिनियम दिनांक 1.1.1993 को लागू हुआ और महामहिम राष्ट्रपति द्वारा दिनांक 4.6.1992 को इस अधिनियम को सहमति प्रदान की गयी थी। कर्मचारी भविष्य निधि एक्ट् 1952 राजस्थान राज्य में शैक्षणिक संस्थानों पर दिनांक 19.2.1982 के नोटिफिकेशन से लागू किया गया था और इस नोटिफिकेशन का प्रकाशन भारत सरकार के गजट में 6 मार्च 1982 को हुआ था। उक्त आधार पर माननीय उच्च न्यायालय ने यह अवधारित किया कि भारतीय संविधान के अनुच्छेद 254 (2) में प्रदत्त व्यवस्था के अनुसार प्राविडेण्ट फण्ड से सम्बन्धित राज्य सरकार द्वारा पारित अधिनियम 1989 वर्तमान मामले में लागू होगा और कर्मचारी भविष्य निधि एक्ट् 1952 के आधार पर प्राविडेण्ड फण्ड का संचालन नहीं होगा। माननीय उच्च न्यायालय की एकल पीठ में विद्यालयों की याचिका स्वीकार की और दिनांक 14.8.97 का आदेश खण्डित किया।

27. माननीय उच्च न्यायालय की एकलपीठ के उक्त निर्णय के विरुद्ध माननीय उच्च न्यायालय की खण्डपीठ में दिनांक 12.2.2002 को अपील खारिज की। माननीय उच्च न्यायालय द्वारा उक्त दोनों ही मामलों में दी गई विधि व्यवस्था से यह जाहिर है कि क्षेत्राधिकार के बिन्दु पर उक्त दोनों ही विधि व्यवस्थाओं से विपक्षीगण के हित में कोई मदद नहीं ली जा सकती तथा क्षेत्राधिकार के बिन्दु पर मिस एम. सुन्दरमबाल में माननीय सर्वोच्च न्यायालय द्वारा दी गई विधि व्यवस्था वर्तमान मामले में प्रासंगिक है एवं लागू होती है और यह अवधारित किया जाता है कि वर्तमान मामले के सुनवाई का क्षेत्राधिकार इस न्यायालय को प्राप्त है क्षेत्राधिकार से सम्बन्धित वाद–बिन्दु संख्या 1 तद्नुसार विपक्षीगण के विरूद्ध सकारात्मक निर्णीत किया जाता है।

28. द्वितीय वाद–बिन्दु इस आशय का है कि क्या श्रमिक द्वारा सेवा समाप्ति की तिथि 6.10.2003 के ठीक पूर्व कैलेण्डर वर्ष में 240 दिन तक अविच्छिन सेवा की गयी है, इस सम्बन्ध में याची पक्ष की तरफ से यह बहस की गयी है कि उसने सेवा समाप्ति से पूर्व 240 दिन तक नियोजक के यहाँ कार्य किया है जिसका उल्लेख याचिका के प्रस्तर 5 में और याची के शपथ–पत्र प्रस्तर 5 में किया गया है। विपक्षीगण के विद्वान अधिवक्ता की तरफ से इस तथ्य से वादोत्तर के प्रस्तर 7 में इन्कार किया गया है और प्रस्तर 10 में यह कहा गया है कि अंशकालीन तौर पर वह कार्य करता था और अपनी मर्जी से वह कार्य छोड़कर चला गया अतः वह किसी अनुतोष का हकदार नहीं है। लगातार कार्य करने के सम्बन्ध में याची ने शपथ–पत्र के प्रस्तर 10 में डब्ल्यू –2 लगायत डब्ल्यू –22 का उल्लेख अपने समर्थन में किया है जो उसके वेतन से सम्बन्धित है वेतन पर्ची प्रदर्श डब्ल्यू–2 जनवरी 2002 और प्रदर्श डब्ल्यू–3 फरवरी 2002 से सम्बन्धित है जिनके अवलोकन से यह जाहिर होता है कि प्रार्थी श्रमिक 50 रू. दैनिक मजदूरी पर नियुक्त था और बाद में दैनिक पारिश्रमिक में बढ़ोतरी भी की गयी है तथा श्रमिक को किसी प्रकार का अवकाश अनुमन्य नहीं था। माह में जितने दिन तक उसने सेवा की उसी के हिसाब से पारिश्रमिक का भुगतान किया गया। मार्च 2003 तक श्रमिक 50 रू. दैनिक मजदूरी पर नियुक्त रहा है जो प्रदर्श 2 लगायत प्रदर्श 17 से परिलक्षित होता है। अप्रैल 2003 में श्रमिक की दैनिक मजदूरी 70 रू. कर दी गयी है जो मई 2003 तक है जून 2003 में मजदूरी 3250 रू. मासिक है मौखिक साक्ष्य में श्रमिक रामकिशन ने प्रतिपरीक्षा में पृष्ठ 1 पर स्वीकार किया है कि उसे नियुक्ति पत्र नहीं मिला था और केजुअल लेबर के रूप में लगाया गया था। यह भी स्वीकार किया है कि जितने दिन वह काम करता था। उसी के हिसाब से उसे भुगतान किया जाता था। प्रदर्श डब्ल्यू–2 लगायत प्रदर्श

डब्ल्यू–22 अभिलेखों को उसने स्वीकार किया है और साक्ष्य में कहा है कि उक्त अभिलेखों में जो भुगतान उसे मिला उसे दर्शाया गया है। भुगतान के स्वरूप के सम्बन्ध में यह उल्लेख किया है कि उसे भुगतान प्रतिमाह किया जाता था। यह भी कहा है कि उसे 30 दिन की ही तनख्वाह दी जाती थी। यह भी उल्लेख किया है कि उसे मिश्रा साहब ने कहा था कि औरों को दिखाना है इसलिये दिन कम दर्शाया है। साक्षी ने यह भी कहा है कि इस साक्षी के अतिरिक्त अन्य कोई नहीं था जो इस तरह से काम करता था। साक्षी ने उक्त बयान देकर यह दर्शाने का प्रयास किया है कि वह काम ज्यादा दिन करता था लेकिन अभिलेख में उसके द्वारा किये जाने वाले दिवसों की संख्या कम दर्शायी जाती थी लेकिन श्रमिक का यह बयान बिल्कुल कपोलकल्पना है जिसकी पुष्टि भुगतान पर्ची से होती है जिसमें उसके द्वारा किये गये कार्य के आधार पर दैनिक मजदूरी के अनुसार माह के अन्त में भुगतान किया गया है। श्रमिक ने पृष्ठ 2 में प्रतिपरीक्षा में स्वीकार किया है कि विद्यालय में 2003 में दैनिक मजदूरी पर कार्य करने वालों का वेतन बढ़ाया गया था और इस श्रमिक का भी वेतन बढ़ाया गया था। श्रमिक की मौखिक साक्ष्य की उक्त समीक्षा से तथा वेतन पर्ची के अवलोकन से तथा प्रदर्श 4 नवम्बर 2003 की वेतन एवं प्रदर्श 6 अक्टूबर 2003 के वेतन विवरण से यह स्पष्ट और निर्विवाद रूप से सिद्ध है कि श्रमिक विपक्षी के संस्थान में दैनिक वेतन पर नियुक्त था और उसे सेवा में लिये जाते वक्त कोई नियुक्ति–पत्र प्रदान नहीं दिया गया था।

29. जहां तक श्रमिक द्वारा दिनांक 6.10.2003 के ठीक पूर्व कैलेण्डर वर्ष में 240 दिन तक अविच्छिन्न सेवा किये जाने का तथ्य सिद्ध किये जाने का प्रश्न है इस सन्दर्भ में उल्लेखनीय है कि स्टेटमैन्ट ऑफ क्लेम में 240 दिन से ज्यादा अविच्छिन्न सेवा किये जाने का कथन है। इस सम्बन्ध में कोई उपस्थिति पंजिका अथवा उसकी नकल पत्रावली पर प्रस्तुत नहीं है प्रदर्श डब्ल्यू–2 लगायत डब्ल्यू–22 श्रमिक द्वारा भुगतान की रसीद प्रस्तुत की गयी है जिसका उल्लेख शपथ–पत्र में है और प्रतिपरीक्षा में उसे स्वीकार किया गया है। पृष्ठ 3 पर प्रतिपरीक्षा में श्रमिक ने इस तथ्य से इन्कार किया है कि दिनांक 6.10.2003 के पहले से वह अनुपस्थित चल रहा था। यह भी कहा है कि दिनांक 6.10.2003 को वह विपक्षी के संस्थान में गया था और आधे घण्टे कार्य करने के बाद बिना कुछ कहे उसे बाहर कर दिया गया और बाहर जाने के लिये बाबू राजेन्द्र जी ने कहा था। साक्षी ने यह भी कहा है कि उसकी उपस्थिति सब लोगों के साथ उपस्थिति पंजिका में दर्ज की जाती थी और इस तथ्य को गलत कहा है कि दिनांक 6.10.2003 को विलम्ब से आने के कारण पूछने पर उसने बाबू राजेन्द्र के साथ अभद्र व्यवहार किया और उसे प्रिन्सिपल के समक्ष ले जाया गया तो कार्यालय अधीक्षक गिरधारी लाल की उपस्थिति में उसने प्रिन्सिपल के साथ भी अभद्र व्यवहार किया। श्रमिक ने यह मानने से इन्कार किया है कि उसी समय उसने यह भी कहा कि वह नौकरी नहीं करेगा उसका हिसाब कर दिया जाए। मौखिक साक्ष्य से 240 दिन तक अविच्छिन्न सेवा किए जाने के तथ्य का समर्थन नहीं होता है।

30. जहां तक प्रलेखीय साक्ष्य का प्रश्न है याची ने यह स्वीकार किया है कि जो भुगतान किया गया था उसकी रसीद उसने प्रस्तुत की है। दिनांक 6.11.2001 को श्रमिक ने अपनी नियुक्ति बताई है और प्रबन्धन द्वारा यह कहा गया है कि दिनांक 6.10.2003 से पूर्व प्रार्थी श्रमिक अनुपस्थित चल रहा था सितम्बर एवं अक्टूबर 2003 के वेतन भुगतान से सम्बन्धित कोई पर्ची याची पक्ष की तरफ से नहीं प्रस्तुत है। अक्टूबर 2003 में श्रमिक ने 4 दिन काम किया है। 5 अक्टूबर को अनुपस्थित रहा है, 6 अक्टूबर को उपस्थित रहा है जिस दिन सेवा से निकाला गया है। अगस्त 2003 मे 30 दिन, जुलाई 2003 में 24 दिन, जून 2003 में 29 दिन, मई 2003 मे 31 दिन, अप्रैल 2003 में 28 दिन, मार्च 2003 में 30 दिन, जनवरी 2003 में 30 दिन, दिसम्बर 2002 में 28 दिन, नवम्बर 2002 में 28 दिन और अक्टूबर 2002 में 29 दिन श्रमिक को कार्य करना दर्शाया गया है। यही पर यह बात विशेष रूप से उल्लेखनीय है। कि जुलाई 2003 की कोई भुगतान पर्ची नहीं है। जुलाई 2002 की पर्ची पर ही स्याही से 03 बनाया गया है जिसका कोई स्पष्टीकरण नहीं है जबकि वेतन पर्ची कम्प्यूटरीकृत है।

31. फरवरी 2003 में श्रमिक को 30 दिन कार्य दशार्या गया है जो त्रुटिपूर्ण है क्योंकि फरवरी माह 30 दिन का नहीं होता है। भुगतान पर्ची से प्राप्त उक्त सूचना से यह जाहिर है कि श्रमिक द्वारा 240 दिन की अविच्छिन्न सेवा नहीं की गयी है।

32. धारा 25 (एफ) में दी गयी व्यवस्था के अनुसार किसी नियोक्ता के अधीन जिस कर्मचारी ने धारा 25 (2) (a) (i) के अनुरूप एक वर्ष अवधि की अविच्छिन्न सेवा कर ली है उसकी छटनी 25 (एफ) में दी गयी प्रक्रिया का पालन किए बिना नहीं की जा सकती है। इस सम्बन्ध में विपक्ष की तरफ से प्रस्तुत 2006, सुप्रीम कोर्ट (एल.एण्ड एस.), 38 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी विधि व्यवस्था प्रासंगिक है। 2006 सुप्रीम कोर्ट (एल. एण्ड एस.), 38, सुरेन्द्र नगर जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमर सिंह – प्रत्यर्थी में प्रकरण के तथ्यानुसार प्रत्यर्थी की सेवा 15.8.85 के आदेश से समाप्त कर दी गयी थी। सेवा समाप्ति के लगभग सात साल बाद दिनांक 01.6.92 को प्रत्यर्थी ने अपीलार्थी को सेवा में पुनर्स्थापना की नोटिस भेजी और अन्ततः प्रत्यर्थी की सेवा समाप्ति का विवाद न्यायनिर्णयन हेतु औद्योगिक न्यायाधिकरण को सुपुर्द किया गया। प्रत्यर्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह उल्लेख किया कि वह सेवा समाप्ति के आदेश दिनांक 15.8.85 तक 10 रूपये दैनिक मजदूरी पर अपीलार्थी की सेवा में था एवं सेवा समाप्ति के आदेश निर्गत होने के पूर्व औद्योगिक विवाद अधिनियम के प्राविधानों का पालन नहीं किया गया। श्रम न्यायालय के समक्ष प्रत्यर्थी की तरफ से एक आवेदन अपीलार्थी को निर्देश जारी करने के लिए प्रस्तुत हुई कि अपीलार्थी 1976 से 1986 तक की सेवा अवधि का वेतन रजिस्टर एवं मस्टर रोल प्रस्तुत करें। अपीलार्थी ने स्टेटमेन्ट ऑफ क्लेम के विरूद्ध यह कथन प्रस्तुत किया कि प्रत्यर्थी ने स्वंय काम पर आना बन्द कर कर दिया एवं उसे कोई स्थायी नियुक्ति नहीं दी गयी थी। वह

मुतफर्का कार्यों के लिए नियुक्त था तथा जब काम होता था तो उसे बुला लिया जाता था। यह भी कहा गया कि कर्मचारी ने सेवासमाप्ति के ठीक पूर्व पूर्ववर्ती 12 माहों में 240 दिन तक लगातार कार्य नहीं किया है। यह भी कहा गया कि उसने सन् 82, 83 और 84 में क्रमशः 114, 63 और 124 दिन कार्य किया है अतः उसकी सेवाऐं समाप्त करने के पूर्व धारा 25 (एफ) औद्योगिक विवाद अधिनियम में दी गयी प्रक्रिया का अनुपालन करने की विधिक आवश्यकता नहीं थी।

प्रत्यर्थी ने स्वयं को साक्ष्य में प्रस्तुत कर सशपथ कहा है कि वह दस साल तक 470 रूपये प्रतिमाह के वेतन पर नियुक्त था। अपीलार्थी की तरफ से एक कर्मचारी ने साक्ष्य में उपस्थित होकर कहा कि कर्मचारी ने कभी भी एक वर्ष में 240 दिन काम नहीं किया। श्रम न्यायालय ने प्रत्यर्थी के साक्ष्य पर भरोसा किया और मस्टर रोल तथा 1976 से 86 तक की वेतन रजिस्टर न प्रस्तुत करने पर प्रतिकूल अवधारणा ग्रहण कर यह अवधारित किया कि प्रत्यर्थी ने 240 दिन से ज्यादे कार्य किया अतः उसकी सेवामुक्ति अवैधानिक थी। श्रम न्यायालय ने धारा 25 (एफ), 25 (जी) एवं 25 (एच) की प्रक्रिया का पालन न करने के कारण कर्मचारी को पुनर्स्थापना के लिए आदेशित किया एवं साथ ही पिछले वेतन की 20 प्रतिशत धनराशि अदा करने का निर्देश दिया।

माननीय उच्च न्यायालय की एकलपीठ ने श्रम न्यायालय के निर्णय की पुष्टि की तथा श्रम न्यायालय के निर्णय के विरूद्ध अपीलार्थी की याचिका खारिज की। एकल पीठ के निर्णय के विरूद्ध माननीय उच्च न्यायालय की खण्डपीठ ने लेटर्स पेटेंट अपील निरस्त की एवं यह अवधारित किया कि श्रम न्यायालय ने सही अवधारित किया है कि कर्मचारी ने मौखिक साक्ष्य से अपने कथन साबित किया है। माननीय खण्डपीठ ने श्रम न्यायालय द्वारा वेतन पंजिका, मस्टर रोल, तथा कर्मचारियों की वरिष्ठता सूची न प्रस्तुत करने पर ग्रहण की गयी प्रतिकूल अवधारणा को भी सही ठहराया। श्रम न्यायालय ने यह भी अवधारित किया कि प्रत्यर्थी की तुलना में एवं कनिष्क कर्मचारी की सेवा नियमित रूप से जारी रखी गयी और प्रत्यर्थी की सेवा समाप्त कर दी गयी।

माननीय सर्वोच्च न्यायालय के समक्ष माननीय उच्च न्यायालय की खण्डपीठ के निर्णय के विरूद्ध अपीलार्थी की यह बहस थी कि माननीय सर्वोच्च न्यायालय ने अपने अनेक निर्णयों में अत्यन्त स्पष्ट रूप से यह अवधारित किया है कि प्रारम्भिक तौर पर सिद्ध करने का दायित्व कर्मचारी पर है कि सेवा समाप्ति की तिथि के पूर्व एक वर्ष में कर्मचारी ने 240 दिन कार्य किया है जो दायित्व निर्वाह करने में कर्मचारी असफल रहा है। यह बहस भी की गयी कि 10 साल का अभिलेख प्रस्तुत न करने पर प्रतिकूल अवधारणा ग्रहण करने की कोई वजह नहीं थी। प्रत्यर्थी की तरफ से यह बहस की गयी श्रम न्यायालय ने प्रतिकूल अवधारणा अभिलेखों के सम्बन्ध में ग्रहण करके श्रम न्यायालय ने सही किया है क्योंकि नियोजक के कब्जे में अभिलेख थे अतः श्रम न्यायालय द्वारा मांग किये जाने पर उसे प्रस्तुत करना नियोक्ता का कर्तव्य था। यह बहस भी की गयी कि अभिलेख नियोक्ता के कब्जे में है इसलिए उसका दायित्व है कि वह सिद्ध करे कि सम्बन्धित अवधि में कर्मचारी ने 240 दिन कार्य नहीं किया है।

उभयपक्ष की उक्त बहस के परिपेक्ष्य में माननीय सर्वोच्च न्यायालय ने धारा 2 (ओओ), धारा 25 (बी) एवं 25 (एफ) की स्पष्ट एवं बोधगम्य व्याख्या करते हुए प्रस्तर 8 पृष्ठ 43 में कर्मचारी द्वारा तथ्यों को सिद्ध करने के दायित्व के सम्बन्ध में तथा छटनी की वैधानिकता के सम्बन्ध में यह अवधारित किया है, "To attract provisions of Section 25-F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry within the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25- B under the employer. These conditions are cumulative. If any of these conditions is missing the provisions of Section 25 –F will not be attracted. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F of the Act.

The section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely:-

(i) one month's clear notice in writing indicating the reasons for retrenchment or that the workman has been paid wages for the period of notice in lieu of such notice;

(ii) payment of retrenchment compensation which shall be equivalent to 15 day's average pay for every completed year of continuous service or any part thereof, in excess of six months;

(iii) a notice to the appropriate Government in the prescribed manner."

माननीय सर्वोच्च न्यायालय ने प्रस्तर 10 में (1980) 4 एस. सी.सी पृष्ठ 443, सुरेन्द्र कुमार वर्मा बनाम सेन्ट्रल गर्वमेंन्ट इण्डस्ट्रीयल ट्रिब्यूनल कम लेबर कोर्ट में अपने पूर्णपीठ के फेसले सहित अनेक फेसलों का उल्लेख एवं उनकी व्याख्या करते हुए यह अवधारित किया है कि यह सिद्धान्त है कि सिद्ध करने का दायित्व कर्मचारी पर है कि वह दर्शाए कि कथित छटनी की तिथि के ठीक पूर्व एक वर्ष में उसने 240 दिन कार्य किया है और यह दायित्व भी उसी पर है वह स्वयं के साक्ष्य में परिक्षित कराने के अतिरिक्त साक्ष्य प्रस्तुत करें।

निर्णय के प्रस्तर 18 में माननीय सर्वोच्च न्यायालय ने उल्लेख किया है कि प्रत्यर्थी की तरफ से मौखिक साक्ष्य के अतिरिक्त कोई साक्ष्य 240 दिन कार्य करने के सम्बन्ध मे नहीं प्रस्तुत किया गया है, न वेतन या मजदूरी के सम्बन्ध में कोई रसीद, या अभिलेख या आदेश प्रस्तुत है, न कोई सहकर्मचारी

परिक्षित कराया गया, न ही नियोक्ता द्वारा प्रस्तुत मस्टर–रोल पर कोई खण्ड़न प्रस्तुत किया गया।

माननीय सर्वोच्च न्यायालय ने यह भी उल्लेख किया है कि यह असम्भव है कि कर्मचारी जो इतनी लम्बी सेवा करने का दावा करता है उसके पास नियोक्ता के अधीन सेवा मे लगे रहने तथा कार्य की प्रकृति के सम्बन्ध में कोई अभिलेखीय साक्ष्य नहीं होगा। माननीय सर्वोच्च न्यायालय ने अवधारित किया कि कर्मचारी ने 240 दिन तक कार्य मे संलग्न रहने के तथ्य को सिद्ध करने के दायित्व का निर्वाह नहीं किया है एवं विद्वान अधीनस्थ न्यायालयों ने नियोक्ता द्वारा 10 वर्ष का अभिलेख न प्रस्तुत करने के सम्बन्ध में प्रतिकूल अवधारणा गलत ग्रहण की है। माननीय सर्वोच्च न्यायालय ने यह अवधारित किया कि प्रत्यर्थी की सेवा समाप्ति के पूर्व प्रत्यर्थी को धारा 25 (एफ) की सुरक्षा अथवा अनुपालन का अधिकार नहीं था। धारा 25 (जी) एवं 25 (एच) के अनुपालन के सम्बन्ध में यह साक्ष्य था कि दैनिक वेतन भोगी की सूची का रख–रखाव अपीलार्थी द्वारा नहीं किया जाता। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि कर्मचारी नियमित सेवा के अभाव में अपीलार्थी से दैनिक वेतन भोगियों की वरिष्ठता सूची के रख–रखाव की उम्मीद नहीं की जा सकती है। अभिलेखों की मांग पर अपीलार्थी द्वारा न प्रस्तुत किये जाने पर धारा 114 (III) (जी) भारतीय साक्ष्य अधिनियम के अन्तर्गत न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण किए जाने के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है ऐसी अवधारणा ग्रहण करने पूर्व न्यायालय के समक्ष कर्मचारी द्वारा इस बात का साक्ष्य प्रस्तुत करना होगा कि कोई वरिष्ठता सूची अस्तित्व में है अन्यथा प्रतिकूल अवधारणा ग्रहण करने की अनुतोष नहीं प्रदान की जा सकती। न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण करने हेतु अधिकार प्रदत्त होने के लिए न्यायालय को सन्तुष्ट होना अनिवार्य है कि साक्ष्य अस्तित्व में है और उसे सिद्ध किया जा सकता था। माननीय सर्वोच्च न्यायालय ने तदनुसार अपील स्वीकार की।

33. जहां तक धारा 25 (जी) एवं धारा 25 (एच) का उल्लंघन का प्रश्न है श्रमिक द्वारा प्रतिपरीक्षा में स्वंय यह स्वीकार किया गया है कि मौखिक तौर पर उसे केजुअल लेबर के रूप में लगाया गया था और दैनिक मजदूर के रूप में उसका पारिश्रमिक भी सेवा के दौरान बढ़ाया गया था अतः प्रार्थी श्रमिक जिस श्रेणी का श्रमिक था उसके सम्बन्ध में वरिष्ठता सूची के रखरखाव की अपेक्षा विपक्षी से नहीं की जा सकती है। जैसा कि माननीय सर्वोच्च न्यायालय ने अवधारित किया है। इस प्रकार श्रमिक पक्ष द्वारा धारा 25 (जी) एवं धारा 25 (एच) के प्रावधान का उल्लंघन साबित नहीं किया गया है। जहॉ तक प्रार्थी को सेवा से हटाये जाने के बाद लक्ष्मण जाट को प्राविधान के विरुद्ध नियोजित किये जाने का प्रश्न है इस सन्दर्भ में उल्लेखनिय है कि विपक्षी साक्षी श्री गिरधारी सिंह ने प्रतिपरीक्षा में साक्ष्य के समय दिनांक 3.4.2013 को यह उल्लेख किया है कि लक्ष्मण जाट नाम का कोई व्यक्ति काम नहीं कर रहा है और इस तथ्य को स्वीकार किया है कि याची को सेवा से चले जाने के बाद लक्ष्मण जाट से काम लिया गया था और उसकी संविदा समाप्त होने पर वह भी चला गया और उसे दैनिक मजदूरी पर रखा गया था। यह भी कहा है कि लक्ष्मण जाट के चले जाने के बाद आउटसोर्सिंग के आधार पर काम लिया जा रहा है। चूंकि धारा 25 (एफ) के प्राविधान का लाभ होने के लिये प्रार्थी श्रमिक अपनी दावेदारी सिद्ध नहीं कर सका है, अतः लक्ष्मण जाट को विपक्ष द्वारा अल्प–अवधि के लिये कार्य पर रखने से प्रार्थी श्रमिक को कोई लाभ प्रदान करने की स्थिति उत्पन्न नहीं होती।

34. प्रार्थी पक्ष की तरफ से अपने दावेदारी के समर्थन में 2001(1), वेस्टर्न लॉ केसेज (राजस्थान) पृष्ठ 667 नरोत्तम केला बनाम स्टेट ऑफ राजस्थान का दृष्टान्त प्रस्तुत किया गया है जिसका मैंने सम्यक अवलोकन किया।

35. नरोत्तम केला बनाम स्टेट ऑफ राजस्थान एवं अन्य में याची विपक्षी के यहॉ परिवीक्षाधीन स्पिनिंग मास्टर के पद पर नियुक्त था जिसकी सेवायें प्रबन्ध निर्देशक, राजस्थान राज्य सहकारी स्पिन्निंग एण्ड जिन्निंग मिल्स फेडरेशन लिमिटेड़, स्पिन्निंग यूनिट, गुलाबपुरा जनपद भिलवाडा द्वारा समाप्त कर दी गयी जिससे क्षुब्ध होकर याची ने निर्देशक के समक्ष आवेदन प्रस्तुत की लेकिन वहॉ से कोई अनुतोष पाकर याची ने क्षेत्रीय उप–श्रम आयुक्त सह–सुलह अधिकारी के समक्ष सुलह समझौता की कार्यवाही प्रारम्भ करने के लिए याचिका प्रस्तुत की जिसकी सुनवाई करने से सुलह अधिकारी ने आदेश दिनांक 24.7.98 में ने यह कहकर इन्कार कर दिया कि याची के मामले में औद्योगिक विवाद अधिनियम के अन्तर्गत कोई ''औद्योगिक विवाद'' उत्पन्न नहीं होता। उप–श्रम आयुक्त सह–सुलह अधिकारी के आदेश से व्यथित होकर याची ने माननीय उच्च न्यायालय, जोधपुर पीठ के समक्ष सिविल याचिका प्रस्तुत कर कहा कि उप–श्रम आयुक्त सह–सुलह अधिकारी को सुलह की कारवाई प्रारम्भ करने हेतु प्रस्तुत आवेदन इन्कार करने का क्षेत्राधिकार प्राप्त नहीं था। यह भी कहा गया कि उप–श्रम आयुक्त सह–सुलह अधिकारी के आदेश में आवेदन सुनवाई करने से इन्कार करने का कारण नहीं दर्शाया गया। प्रत्यर्थी की तरफ से यह बहस की गई कि याची परिवीक्षाधीन था अतः वह औद्योगिक विवाद अधिनियम की धारा 2 (एस) के अन्तर्गत ''कर्मकार'' की परिभाषा से आच्छादित नहीं था।

माननीय उच्च न्यायालय ने यह अवधारित किया कि उप–श्रम आयुक्त सह–सुलह अधिकारी द्वारा पारित आदेश कारणविहीन था यह भी अवधारित किया कि माननीय उच्च न्यायालय के समक्ष पक्षकारों ने जो विवाद उठाया है उससे स्वयं यह दर्शित है कि नियोक्ता और नियोजित के बीच न्यायनिर्णयन की आवश्यकता है। माननीय उच्च न्यायालय ने यह भी अवधारित किया कि आदेश में उप–श्रम आयुक्त सह–सुलह अधिकारी ने ऐसा कोई उल्लेख नहीं किया है कि याची ''कर्मकार'' नहीं है। माननीय उच्च न्यायालय ने तद्नुसार याचिका स्वीकार की और उप–श्रम आयुक्त सह–सुलह अधिकारी को याची की आवेदन ग्रहण करने तथा विधि के अनुसार आगामी कार्यवाही करने हेतु निर्देशित किया।

उक्त प्रस्तुत दृष्टान्त से याची के मामले में कोई मदद नहीं ली जा सकती है तथा उक्त दृष्टान्त से यह सन्देश मिलता है कि किसी प्रार्थी की आवेदन में दिए गए तथ्यों के आधार पर प्रार्थी तथा नियोजक के बीच यदि कोई विवाद उत्पन्न हुआ पाया जाता है तो उसकी आवेदन तथा उत्पन्न विवाद को समझौता अधिकारी द्वारा नजर अन्दाज नहीं किया जाना चाहिए।

36. पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रदत्त साक्ष्य भी उक्त समस्त व्याख्या एवं विश्लेषण के आधार मैं इस निष्कर्ष पर हूँ कि प्रार्थी श्रमिक रामकिशन चौधरी इस तथ्य को सिद्ध करने में असफल है कि उसे धारा 25 (एफ), औद्योगिक विवाद अधिनियम 1947 के प्राविधान के उलंघन में उसकी सेवा समाप्त की गयी है, अतः आर्मी स्कूल, जयपुर द्वारा दावेदार रामकिशन चौधरी की माली के पद से दिनांक 06.10.2003 से सेवा समाप्त करना वैध एवं विधि द्वारा न्यायानुमत है तथा दावेदार किसी अनुतोष को पाने का हकदार नहीं है। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तद्नुसार पारित किया जाता है।

37. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1359.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा जनरल मैनेजर ऑर्डनेन्स फैक्ट्री खमरिअ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/168/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-14012/18/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 16th April, 2014

S.O. 1359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/168/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Ordnance Factory, Khamaria and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-14012/18/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/168/2000

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Ter Singh,
Qtr.No. S 69/8,
Type-I, East Land, Khamaria,
Jabalpur .....Workman

Versus

General Manager,
Ordnance Factory,
Khamaria,
Jabalpur .....Management

AWARD

Passed on this 10th day of March, 2014

1. As per letter dated 25-9-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/18/2000/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur in dismissing the services of Shri Ter Singh, Darban, T.No. SO/54/001372 *vide* its order No. 1164/Viz./164 dated 29-11-94 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by workman at Page 2/1 to 2/6. Case of Ist party workman is that he was served with charge sheet dated 10-6-91 by the management of IInd party. The allegations against him were that he committed theft of Govt. property, unauthorized possession of Govt. material, committing act unbecoming of Govt. servant. He denied charges against him. Enquiry Officer was appointed on 28-6-92. He had participated in enquiry along with Defence Assistant. Departmental Enquiry was not properly conducted. He was not supplied documents before initiating Enquiry proceedings. List of documents was not supplied along with charge sheet. Enquiry was proceeded without supplying documents. That Presenting Officer submitted brief after the workman was required to submit his brief it caused prejudice to his defence. The enquiry was not conducted properly. Principles of natural justice were violated. That the seizure memo was signed by orderly without indicating his name, designation. Seizure Memo doesnot show the weight of the component seized. Seizure of bicycle could have been included in seizure memo dated 24-5-91. Workman submits that findings of Enquiry Officer are perverse. His defence

was not taken into consideration. The Appellate Authority rejected his appeal on fringy ground. On such reasons, Ist party workman prays for his reinstatement with back wages.

3. IInd party filed Written statement at Page 8/1 to 8/15. Issues of charge sheet to the workman is not disputed. That the workman was issued charge sheet for attempt to take out brass components rapped in scarf. The workman was apprehended, the seizure memo of brass components was prepared. Charge sheet was issued to workman along with letters dated 25-5-91, seizure memo dated 24-5-91was of Shri S.K. Mishra, Sardarilal, names of witnesses were indicated in the charge sheet. The workman had denied charges. Enquiry Officer was appointed. Presenting Officer was appointed. Departmental Enquiry was conducted. Ist party workman participated in enquiry along with Defence assistant. The details of the enquiry Proceedings are narrated in Para-7 of the Written Statement. The witnesses of management were cross-examined. The charge sheeted employee couldnot adduce any evidence in his defence. Considering findings of Enquiry Officer based on evidence, the workman was dismissed from service after issuing show-cause notice. IInd party submits that enquiry was conducted as per rules. If enquiry is found vitiated, permission is sought to prove misconduct in Court.

4. It is reiterated that copper material was carried by workman in Gamsha on his bicycle. Considering gravity of proved misconduct, punishment of dismissal from service is proper. The reinstatement of workman should not be allowed. The management has lost confidence in workman. The Appellate Authority rejected appeal considering the evidence. Workman is not entitled for reinstatement. Order of his termination is not illegal. On such grounds, IInd party prays for rejection of claim.

5. Workman has filed rejoinder at Page 9/1 to 9/6 reiterating its contentions in statement of claim.

6. Enquiry conducted against workman is found legal by my predecessor as per order dated 3-9-2012. Considering pleadings between parties, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the misconduct alleged against workman are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal imposed against workman vide order dated 29-11-94 is proper and legal?	In Affirmative
(iii)	If so, to what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. As per order dated 3-9-2012, enquiry conducted against workman is found proper and legal by my predecessor therefore question remains for decision is whether the charges alleged against workman are proved from evidence in Enquiry Proceedings. From pleadings in statement of claim and Written Statement filed by management, there is no dispute that charge sheet was issued to the workman alleging misconduct (1) attempt to theft of Govt. property, (2) unauthorised possession of Govt. material, (3) conduct unbecoming of Govt. servant. The evidence of management's witness Shri S.P.Mishra is at Page 47 to 50 of enquiry proceedings. Shri S.P.Mishra in his statement in Enquiry Proceedings has stated that Shri Ter Singh was attempting to run away from gate and Shri S.K.Mishra and Santri were pulling up him. In reply to Q.3, he says that he was present when the articles were seized at naala. In reply to Q.4, he says 5 components were lying in front of naala, one component was lying near the tree. That he himself had called officer. That orderly officer had taken workman to his room, he had given his statement to the orderly officer. In his cross-examination by Assisting Officer, said witness has stated that he was unauthorized to enter from all gates including Gate No.4. In his further cross-examination, he says that at the time of incident of throwing components, he was engaged in telephone calls. He claims ignorance in which section the components were manufactured. He also claims ignorance who has recorded statement of witness Sardarilal. The witness says that he had seen components lying outside the gate. When components were lying outside the gate, workman Ter Singh was standing near gundi. His statement was recorded on day of incident. Witness S.K.Mishra in his statement says that on day of incident, he was on duty at Gate No.4 from 2 p.m. to 11 p.m. There was a rule that after duty period was over, the employees had to exit from Gate No.1. when workman requested him for going out from Gate No.4, he had refused. On search of workman six components of brass were found with the workman. When this witness was asked how those components were found at naala, the witness has explained that workman Ter Singh told that he was going to attend urine call therefore he was released. Then the workman had thrown those components towards drainage. One of the component was thrown behind the guard room. The evidence of witness further shows that he had seen workman throwing component. That he did not say anything at that time to the workman. After orderly Officer arrived the components were collected. Workman was taken to the room of orderly officer. In his cross-examination, witness S.K.Mishra says that he had tried to stop workman form throwing components. That components were thrown by workman is corroborated by witness S.P.Mishra & Sardarilal that six components were thrown by Ter Singh, Ist party workman. The evidence of both the witnesses on above point is not shattered in their cross-examination.

8. Statement of Ter Singh was recorded by Enquiry Officer. In his statement, workman has admitted his cycle was standing near security office but he claims that the metal components in gamsha/ white scart were kept by Shri S.K.Mishra. he had no knowledge about it. He had opened knot of the scarf. The statement of Ter Singh is of denial of the incident. However 3 witnesses of management are consistently saying that the workman had collected metal components in gamsha scarf kept at career of his bicycle when he had thrown those components towards drains/ naali. The seizure memo of six components is signed by workman. Seizure of bicycle is not shown in it.

9. Learned counsel for workman Shri Vijay Tripathi during course of argument emphasized that materials components were collected from nala not seized from workman. The seizure is shown from Shri S.K.Mishra, Durban. He also denies seizure of cycle by security man belong to him. The materials grabbed in gamcha on bicycle. The evidence of management's witness cannot be accepted as gosped truth. It was emphasized that the findings of Enquiry Officer are not supported by evidence. The findings are perverse. Misconduct is not proved. The appeal was dismissed without application of mind.

10. Counsel of IInd party Mr. A.K.Shashi submits that enquiry conducted against workman is found legal. All the witnesses of the management are eye witnesses. Any kind of enmity is not pleaded. Management is not required to prove misconduct beyond reasonable doubt. The findings of Enquiry Officer are supported by evidence.

11. The evidence discussed above, all the 3 management witnesses have deposed that workman had thrown metal component. Said part of evidence is not shattered in cross-examination of management's witnesses. No reason is brought on record why management's witnesses are deposing false against workman. Any kind of enmity is not suggested to management's witness Shri S.K.Mishra and Sardarlal. Even if ordinary test is applied while appreciating evidence of management's witness, there is no reason to disbelieve their evidence. The legal position is rather settled that in Enquiry Proceeding, degree of proof is not required as in criminal case to prove guilt beyond reasonable doubt. The evidence in Enquiry Proceedings is to be appreciated following the principles of probabilities. When 3 witnesses are deposing against workman before Enquiry Officer that workman had thrown metal components which were seized, their evidence is not shattered. The misconduct alleged against workman is proved from evidence. For above reasons, I record my finding in Point No.1 in Affirmative.

12. In view of my finding in Point No.1, question arises whether the punishment of dismissal imposed against workman is proper or it is disproportionate to the proved misconduct. The misconduct alleged against workman proved from evidence in Enquiry Proceedings relates to attempt to commit theft of six brass components weighing 6kg 200 gms. Committing heft of Govt. properly is certainly misconduct of serious nature.

13. Learned counsel for IInd party Mr. Shashi relies on ratio held in

Case of Punjab Dairy Development Corporation Ltd and another versus Kalasingh and others reported in 1997(6) SSC 159. Their Lordship held though Labour Court did not elaborate consideration of evidence, yet in view of the findings of misconduct arrived at by it the inference was that the management had lost confidence in the workman that he would truthfully and faithfully perform his duties. Labour Court therefore rightly declined to exercise power under Section 11-A. the dismissal on ground of loss of confidence in employee was upheld.

In Case of Gurmit singh Viku versus Punjab and Sind Bank and others reported in 2011-I-LLJ-665(MP). Their Lordship held on charges of willful damage to property of Bank and involving Bank in serious loss-challenge of dismissal held on facts not sustainable.

In case of UP State road Transport Corporation versus Basudeo Chaudhary and another reported in 1997(11) Supreme Court Cases 370. Their Lordship held removal from service whether proportionate or disproportionate to misconduct, that punishment of removal was justified and not disproportionate. Though misconduct was an attempt to cause a loss of only Rs.65/ to the corporation.

In case of R.Manoharan versus Presiding Officer, Labour Court, Salem reported in 2001 LLR 1159, his Lordship held what is to be borne in mind is the action of the delinquent resulting in loss of revenue to the corporation. . Labour Court had taken into consideration requirements under Section 11-A and rightly held order of dismissal to be fair.

In present case, the evidence before Enquiry Officer is consistent that the workman admitted to commit theft of six metal components weighing 6 kgs 200 gms and throwing those metal components towards naali when he was refused permission to go out of Gate No.4, considering proved misconduct, the punishment of dismissal imposed against workman cannot be said disproportionate. Therefore I record my finding in Point No.2 in Affirmative.

14. In the result, award is passed as under:-

(1) The action of the management of Ordnance Factory, Khamaria, Jabalpur in dismissing the services of Shri Ter Singh, Darban, T.No. SO/54/001372 vide its order No. 1164/Viz./164 dated 29-11-94 is proper and legal.

(2) Workman is not entitled to relief prayed by him.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1360.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा एन टी पी सी लिमिटेड (एफ एस टी पी पी) के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 13 of 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/173/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 16th April, 2014

S.O. 1360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 13 of 2013) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NTPC Ltd., FSTPP and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-42011/173/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 13 of 2013

Parties : Employers in relation to the management of NTPC Ltd., FSTPP.

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. U.K. Mondal, Ld. Advocate.
On behalf of the Workman	:	Mr. P. Mukherjee, Ld. Advocate.

State : West Bengal. Industry: Power.

Dated : 27th March, 2014.

AWARD

By Order No.L-42011/173/2012-IR(DU) dated 28.02.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the Management of NTPC is justified for implementing/allowing two types of wages for contractual workers like 'norms' and 'non-norms' is legal and/or justified? If not what relief the workmen are entitled to?"

2. When the case is taken up for hearing today, copy of an order dated 28th February, 2014 passed by the Hon'ble Calcutta High Court in W.P. No. 21716 (W) of 2013 is filed on behalf of the management. From the said order it appears that the Hon'ble Court has been pleased to set aside the order of reference dated Feb 28, 2013.

3. Since the order of reference dated 28.02.2013 has been set aside by the Hon'ble High Court, the instant reference case is disposed of accordingly.

Kolkata,
Dated, the 27th March, 2014.

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2014

का.आ. 1361.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा चिल्ड्रनस फिल्म सोसाइटी इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, मुंबई के पंचाट (संदर्भ संख्या CGIT/1/08 of 2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-42012/81/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 22nd April, 2014

S.O. 1361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT-1/08 of 2007) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Children's Film Society India and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-42012/81/2006-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BHORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present :

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO. CGIT-1/8 OF 2007

Parties : Employers in relation to the management of Children's Film Society India

And

Their workman (S. N. Brangera)

Appearances :

For the first party/Management : Mr. R.S. Pai, Adv

For the second party/ workman : Mr. M. B. Anchan, Adv.

State : Maharashtra

Mumbai, dated the 2nd day of April, 2014

AWARD

1. The present reference has been made by the Central Government by its order dated 31.1.2007 passed in exercise of the powers conferred by clause (d) of sub- section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference as per the schedule to the said order are as under:

> "Whether the action of the management of the Children's Film Society India, Murnbai, in terminating the services of their workman Shri Shekhar N. Bangera w.e.f. 17.4.2006 is legal and justified? If not, to what relief the workman is entitled to?"

2. In response to the notices issued by this Tribunal, the second party/workman as well as the first party/ Management put in their appearance. Statement of claim was filed on behalf of the second party/workman on 20.4.2007.

3. In reply to the statement of claim, written statement was filed on behalf of the first party/Management on 11.5.2007.The second party/workman thereafter filed his rejoinder on 9.8.2007.

4. Documents were filed on behalf of the second party/ workman on 18.2.2008. The first party/Management filed its documents on 21.1.2011.

5. On 25.2.2011 it was observed by the Tribunal that there was no need to form any formal issue in the matter as the schedule itself was an issue.

6. On 13.10.2011, affidavit of: second party /workman (WW-1) in lieu of examination-in-chief was filed. By the order dt.13.10.2011, the case was fixed for 2.12.2011 for cross-examination of WW-1. Thereafter, as is evident from the perusal of the ordersheet, various dates were fixed for cross-examination of WW-1. i.e. second party/workman but the second party / workman was not produced for cross-examination on any of such dates. On 17.1.2013, Shri M.B.Anchan, learned counsel for the second party/ workman prayed that he be given last opportunity to produce the workman for cross-examination. Last opportunity was accordingly given and the case was fixed for 21.2.2013. On 21.2.2013, the order sheet reads as under:

> "Mr. M.B.Anchan, Adv. present for the workman. Mr. R. S. Pai, Adv. present for the Management. Learned counsel for the workman submits that the workman is not contacting to him and, therefore, he is not in a position to produce the workman for cross-examination. Put up for filing affidavit on behalf of the management. Call on 14.3.2013."

7. Pursuant to the order dt.21.2.2013, the case was put up on 14.3.2013. On the said date, learned counsel for the first party/Management took further time for filing affidavit on behalf of the first party/Management. The case was accordingly fixed for 26.4.2013. On 26.4.2013, the case was again adjourned to 20.6.2013 for filing affidavit on behalf of the first party/Management. On 20.6.2013, an affidavit on behalf of the first party/Management in lieu of examination-in-chief was filed. By the order dt.20.6.2013, the case was adjourned for cross-examination of MW-I. Various dates were thereafter fixed for cross-examination of MW-I.

8. On 8.1.2014, the order sheet reads as under:

> "Shri M.B.Anchan, learned counsel for the workman.is present. Shri Sanjay, representative for the Management is also present. Shri M.B.Anchan, learned counsel for the Workman refers to the order sheet dt.17.1.2013 and 21.2.1013 and submits that despite repeated communications having been sent by him, the Workman did not contact him and, therefore, the Workman could not be produced for cross-examination. Shri M.B.Anchan further submits that he again sent a communication by speed-post to the workman asking him to contact him (Shri Anchan) for giving instructions in this matter. However, Shri Anchan submits that the said communication, sent by speed-post, has been received back by him with an endorsement that the door was closed. In the circumstances, Shri Anchan prays that a fresh notice be sent to the Workman to appear before the Tribunal.
>
> Let a fresh notice be sent to the Workman to appear before this Tribunal.
>
> Put up on 20.2.2014."

9. Pursuant to the order dt.8.1.2014, the case was put up on 20.2.2014 when the following order was passed:

> "Shri.M.B.Anchan, learned counsel for the Workman is present. Shri Sanjay representative of Shri R.5.Pai learned counsel for the Management is present.
>
> Pursuant to the order dt.8.1.2014 fresh notice was sent to the Workman by Registered Post AD to appear before this Tribunal.
>
> However, the Registered envelope alongwith the Acknowledgement Card has been received back without service.
>
> Shri M.B.Anchan, learned counsel for the Workman prays that the matter may be adjourned today so as to enable him to cross-examine MW-l on the next date.
>
> Let it be fixed for 2.4.2014."

10. Pursuant to the order dt.20.2.2014, the case is put up today for cross-examination of MW-l. Shri M.B. Anchan, learned counsel for the second party/workman and Shri R.S.Pai, learned counsel for the first party/Management are present. Shri R.S.Pai, learned counsel for the first party/ Management states that it is not possible for the first party/ Management to produce MW-l for cross-examination.

11. From the above narration of facts, it is evident that pleadings have been exchanged between the parties. Documents have also been filed by the parties. An affidavit of second party/workman (WW-l) in lieu of examination-

in-chief was filed on behalf of the second party/workman. However, the second party workman (WW-l) never appeared for cross-examination despite repeated opportunities having been given to the second party/ workman in this regard.

12. The first party / Management has also filed an affidavit of MW-l in lieu of examination-in-chief. However, the said witness MW-l has not been produced for cross-examination despite repeated opportunities having been given to the first party/Management.

13. Shri M.B.Anchan, learned counsel for the second party/workman has stated today that despite repeated communications having been sent to the second party/ workman, the second party / workman has not contacted him (Shri M.B.Anchan), and it is not possible to produce the second party/workman (WW- 1) for cross-examination.

14. Similar statement, as noted above, has been made by Shri R.S.Pai, learned counsel for the first party/Management in regard to production of MW-l for cross-examination.

15. Thus, the witness WW-1, whose affidavit in lieu of examination-in-chief has been filed on behalf of the second party/workman, has never been subjected to cross-examination. Therefore, his affidavit is of no significance and cannot be read in evidence. As the affidavit of WW-1 cannot be read in evidence, the documents filed on behalf of the second party/workman, which were required to be proved by WW-1, cannot be looked into. Similarly, the affidavit of MW-l filed on behalf of the first party/ Management is of no significance and cannot be read in evidence as MW-1 has not been produced for cross-examination. As the affidavit of MW-1 cannot be read in evidence, the documents filed on behalf of the first party/ Management, which were required to be proved by MW-I, cannot be looked into.

16. In view of the above, it is evident that even though pleadings have been exchanged between the parties but there is no evidence in support of the respective pleadings on behalf of either of the parties.

17. Statement of claim filed on behalf of the second party/ workman constitutes only pleadings on behalf of the second party/workman. There is no evidence in support of the said pleadings on behalf of the second party/workman. Therefore, the case set up by the second party/workman in the Statement of Claim has not been proved. In the circumstances, no relief can be granted to the second party/ workman in respect of his claim as contained in the aforementioned reference.

18. The above Reference is, therefore, answered by stating that no relief can be granted to the second party / workman.

19. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2014

का.आ. 1362.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेयरमैन एण्ड मैनेजिंग डारेक्टर महानगर टेलीफोन निगम लिमिटेड नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 77/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-40011/14/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 22nd April, 2014

S.O. 1362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 77/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chairman & Managing Director, Mahanagar Telephone Nigam Limited, New Delhi and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-40011/14/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 77/2012

Shri Mange Ram Sharma,
Present, MTNL Staff Union Class-III & IV,
T-28A, Atul Grove Road,
New Delhi. …..Workman

Versus

The Chairman & Managing Director,
Mahanagar Telephone Nigam Limited,
Jeevan Bharti Building,
New Delhi – 110001. …Management

AWARD

A decision was taken to set up a public sector corporation, namely Mahanagar Telephone Nigam Ltd.(hereinafter referred to as the Nigam), to provide telephone services in erstwhile Delhi Telephone District and Bombay Telephone District, which were under the control of Department of Telecommunication, Ministry of Telecommunication, Government of India, New Delhi, vide order dated 18.03.1986, Government of India directed that the Nigam shall commence its operation with effect from 01.04.1986 and staff working in erstwhile Delhi Telephone District and Bombay Telephone District would be deemed

to have been transferred to it on deputation for a period of five years without any deputation allowance. However, adhoc benefit of Rs.100.00 per month was granted to the staff, so deemed to have been transferred on deputation. It was also made clear to those employees that till terms and conditions of service were decided by the Nigam, they would be covered by the existing service conditions, as they were governed while being employees of the Department of Telecommunications, Government of India, New Delhi. Option was given to the employees to opt for services of the Nigam and all those employees who opted as such, were absorbed in the services of the Nigam with effect from 01.11.1998. Prior to their absorption, employees of Group C and D, working under the Department of Telecommunication in the aforesaid two districts, used to contribute towards Central Government Health Scheme (here in after referred to as the scheme) and avail medical facilities from the scheme. In the year 2000, Group C and D employees were switched over to IDA pay scale from CDA pay scale and paid arrears from 01.11.1998. An assurance was given that welfare measures like group insurance scheme, the scheme, leave travel concession and benefits arising out of Fifth Pay Commission, available to the Government employees, will continue to be extended to the employees of the Nigam, till their service conditions are finalized, in consultation with the recognized union.

2. On 11.05.2010, a settlement was entered into, during the course of conciliation proceedings, between the Nigam and its workmen represented by MTNL Kaamgaar Sangh Mumbai and MTNL Staff Union, New Delhi over revision of wage and other related benefits of non-executive employees, which settlement was made effective from 01.01.2007. Decision, relating to OPD expenses and indoor medical facility, taken in the settlement referred above, are detailed as below:

> "4.1 : All perks and allowances, including reimbursement of OPD expenses shall continue unchanged as it was on 01.04.2008 (on the old basic pay and dearness allowance). However, OPD expenses shall be reimbursed only on production of bills. This will be effective from the quarter commencing from 01.04.2010. Perks and allowances shall be reviewed after 31.03.2012.
>
> 4.2 : Indoor medical facilities shall continue unchanged. However, efforts shall be made to administer the same through insurance at the earliest."

3. Circular No.MTNL/Co/Pers/Med.ins.we.20911/622 dated 09.03.2011 was issued by the Nigam in consultation with the MTNL Staff Union(hereinafter referred to as the union). Vide circular No.MR/Cir/2008-09/35 dated 15.03.2011, the Nigam implemented circular referred above, after getting it approved from the union in a meeting held on 24.02.2011 and launched Group Insurance Scheme 2011. The said decision was result of letter dated 09.03.2000, on the strength of which Ministry of Health, Government of India, New Delhi declined the request of the Nigam to provide the schemes facilities to its employees. Shri Mange Ram Sharma, President of the union attempted to assail the said circular before the High Court of Delhi vide writ petition WP(C) 2205/2011, which writ petition was dismissed vide order dated 01.04.2011.

4. On 25.02.2011, Shri Mange Ram Sharma, President of the union, served strike notice to the Nigam, with a copy to the Conciliation Officer. Conciliation Officer entered into conciliation proceedings. During pendancy of conciliation proceedings, the Nigam released Rs.45 crore to United India Assurance Company Ltd. to provide health insurance to its employees. Since the Nigam contested the claim put forward by the union, asserting that health insurance scheme was approved by the union and is more beneficial to the employees, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government declined to make a reference of the dispute, for adjudication, to an industrial adjudicator vide its order dated 19.08.2011. On 10.04.2012, the union submitted an appeal to the appropriate Government, which was supported by documents. On consideration of documents submitted, the appropriate Government reconsidered its decision and referred the dispute to this Tribunal for adjudication, vide order No.L-40011/14/2011-IR(DU), New Delhi, dated 08.05.2012 with following terms:

> "Whether action of the management of Mahanagar Telephone Nigam Ltd., New Delhi for extending medical facilities to its employees through insurance company instead of continuing with existing indoor facilities is legal and justified? If not, what relief the employees of MTNL are entitled to?"

5. Claim statement was filed by Shri Mange Ram Sharma, President of the union, pleading therein that when a decision was taken to set up the Nigam, all Group C and D employees, working in Delhi Telephone District and Bombay Telephone District, were transferred on deputation to the Nigam, for a period of five years. An assurance was given to them that their service conditions and facilities shall remain unchanged till they exercise option for their absorption in the Nigam. When deemed deputation status was terminated, employees were assured vide circular dated 29.09.1998 that all benefits like OTBP/ BCR/ACP, welfare measures like group insurance scheme, the scheme, leave travel concession and benefits arising out of Fifth Pay Commission, available to Government employees, will continue to be extended to employees till service conditions are finalized by the Nigam, in consultation with the recognized union. Employees were getting cashless indoor medical facility with empanelled hospital of the Nigam on the pattern of the scheme as per

their entitlement in respect of room rent, without any upper limit in respect of treatment. A few hospitals, such as Sir Gangaram, Apollo, Escorts and Batra, who were empanelled with the Nigam used to first raise an estimate and as per procedure, 80% of such estimate was issued by the Nigam in the name of the hospital concerned and balance amount was to be paid by the employees, which were reimbursed later on. Indoor medical facilities for Group C and D employees remained more or less the same on parameters of the scheme. They could avail indoor medical facilities almost cashless without any limit, with a cap on room rent, as per entitlement.

6. In the year 2004-05, the Nigam introduced medical insurance scheme on trial basis and entered into contract with ICICI Lombard and said settlement failed owing to large scale resistance from Group C and D employees and default by the aforesaid insurance company. The Nigam again reverted back to the previous policy, as detailed above. On 17.02.2011, he came to know from reliable sources that the Nigam is trying to wriggle out of ongoing medical policy by using terms of wage agreement dated 11.05.2010. He wrote letter dated 22.02.2011 to the Nigam, raising serious reservations in respect of handing over medical facilities to an insurance company. On 24.02.2011, Joint General Manager(HR) informed him at 4.30 p.m. that it was finalized that medical facilities would be provided to the employees by United India Assurance Company Ltd. He issued strike notice dated 25.02.2011, copy of which was served on the Conciliation Officer. The Conciliation Officer entered into conciliation proceedings and issued notice to the Nigam for 28.02.2011. In reply to the said notice, the Nigam took a stand that as per wage agreement, efforts would be made to explore to grant indoor medical facilities through medical insurance scheme. The Conciliation Officer directed the claimant union not to proceed on strike during pendancy of the dispute. The union filed a rejoinder on 03.03.2011 wherein it was emphasized that the Nigam ought to have taken the union into confidence by consultation process, for handing over indoor medical facilities to insurance company. The Nigam was not competent to take unilateral decision in that regard. However, on 10.03.2011, during pendancy of the dispute, the Nigam released a sum of Rs.45 crore to United India Assurance Company Ltd. to provide indoor medical facilities to its employees. The Conciliation Officer issued notice under section 22(2) and 33 of the Industrial Disputes Act, 1947(in short the Act). On 15.03.2011, the Conciliation Officer issued notice to the Nigam. However, the Nigam issued circular dated 15.03.2011 for grant of indoor medical facilities to the employees through aforesaid insurance company. On 23.03.2011, the Nigam took a stand against the claimant union on the grounds of estoppels and claimed that Shri Sharma was not competent to raise objection on the terms of wage agreement dated 11.05.2010, which led to failure of conciliation proceedings, pleads Shri Sharma. Writ petition No.WP(C) 2205/2011 was filed before High Court of Delhi, which was dismissed vide order dated 01.04.2011. Later patent appeal No.392 of 2011 was disposed off vide order dated 28.04.2011.

7. Prior to implementation of health insurance policy through United India Assurance Company Ltd., employees of Group C and D were availing health facilities on parameters of the scheme, without any upper cap limit. However, in the impugned circular, upper cap limit in respect of treatment was fixed at Rs.6 lakh in a financial year for the entire family relating to indoor facilities. It tantamounts to lowering down conditions service of Group C and D employees. Implementation of aforesaid circular is in utter violation of wage agreement dated 11.03.2010. Group C and D employees have to bear many charges while availing health insurance facilities through United India Assurance Company Ltd. It will dig deep hole in the pocket of Group C and D employees. It has been claimed that action of the Nigam in extending medical facilities to its employees through insurance company instead of continuing with existing indoor facility may be declared illegal, quashed and set aside. The Nigam may be directed to deliberate the issue of indoor facilities in respect of Group C and D employees, strictly in spirit of wage agreement dated 11.05.2010 with the majority union and only after consent of the majority union it may hand over indoor medical facility to the insurance company within the framework of consented terms and conditions, pleads the claimant union.

8. Demurral was made by the Nigam pleading that the claimant is asking for recalling for quashing of circular No. MR/Cir/2008-09/35 dated 15.03.2011 on the strength of which circular No.MTNL/Co/Pers/Med.ins.we.20911/622 dated 09.03.2011 was implemented on approval and consultation of the union. Hence, the said circular is binding on the claimant union too. Remedy for quashing that circular is not available under the Act. The above circular was issued on approval being obtained from the union in the meeting held on 24.02.2011, in which meeting, claimant was also called to participate. In its order dated 01.04.2011, the High Court announced that the settlement was arrived at with the consent of the union and it was not open to challenge by the claimant. Observations made by the High Court is reproduced thus:

> "It is not in dispute that when the settlement was arrived at, General Secretary of the petitioner No.1 alongwith three other members were present. In its view of the matter, when petitioner No.1 was well represented, it is not open to it to raise challenge to the terms of its settlement through its President."

9. It is not disputed that service conditions of Group C and D employees were to remain unchanged till rules and regulations were formulated by the Nigam in consultation with the union. The Nigam, in consultation with the union,

made welfare scheme, including medical insurance. Indoor medical scheme was introduced through ICICI Lombard General Insurance. However, the insurance company backed out from the scheme, hence the company paid back premium for the balance period.

10. The Nigam disputes that on 17.02.2011, Shri Mange Ram Sharma learnt from reliable sources that attempts were made to wriggle out from ongoing medical facilities on the strength of wage agreement dated 11.05.2010. Wage agreement dated 11.05.2010 was signed by the recognized unions of Delhi and Mumbai, during the course of conciliation proceedings; hence it is binding on the parties. A decision was taken by the Nigam, in consultation with the majority union, before finalization of health insurance scheme. The Nigam acted in accordance with the provisions of wage settlement and its decision is not arbitrary. The Nigam clarified its position before the Conciliation Officer, where it reiterated that the agreement was signed by the recognized union with five JNC members, who were competent to represent the union. The Nigam had not stopped the President to join that meeting. It was internal matter of the union to decide as to who were to join the meeting, referred above. The Nigam took a decision to launch health insurance scheme since Ministry of Health, Government of India, New Delhi vide its letter dated 09.03.2000 declined its request to provide the scheme facilities to its employees. Entire family, consisting of employee, his spouse, two dependent children and parents are covered under the group insurance scheme, subject to fulfilling attendant conditions. Out of 43000 employees, approximately 95% of the employees have given their consent in respect of health insurance policy. Except a handful of employees, who have their vested interests, have not filed in their forms for opting for the health insurance scheme. The Nigam disputes that by implementation of the circular, it has fixed upper cap arbitrarily and changed service conditions of its Group C and D employees. Insurance scheme offered by the Nigam is completely free of cost and charges while the scheme was available at a monthly subscription of Rs.500.00 or more, which was to be paid by the employees. It has been projected that circular, referred above, is in accordance with the rules and for welfare of the employees. The Nigam claims that dispute raised is not maintainable, hence may be dismissed.

11. Shri Mange Ram Sharma entered the witness box to substantiate his claim petition. Shri M.K. Saxena, Joint General Manager(HR), was brought in the witness box by the Nigam to fend facts. No other witness was examined by either of the parties.

12. Arguments were heard at the bar. Shri Deepak Tyagi, authorized representative, advanced arguments on behalf of the union. Shri Sudhir Kumar Ojha, authorized representative, raised submissions on behalf of the Nigam. Written arguments were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

13. At the outset, it has been argued on behalf of the Nigam that the present dispute is not maintainable under the Act, being an individual dispute. Shri Ojha asserts that the claimant nowhere deposes that the matter was placed before the union and considerable number of members of the union took a decision to take up the cause as its own. Without being espoused by the union, dispute filed by the claimant remains in the realm of his individual capacity and hence cannot attain status of an industrial dispute. On the other hand, Shri Tyagi agitates that the dispute filed before this Tribunal was raised by Shri Mange Ram Sharma in the capacity of President of the union. Shri Sharma, being President of the union was competent to raise the dispute, hence it does not lie in the mouth of the Nigam to agitate that the dispute is an individual dispute.

14. Since eyebrows are raised by the Nigam that the dispute is not an industrial dispute, definition of the term industrial dispute is to be construed. Section 2(k) of the Act defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The definition of term "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject-matter of the dispute, which should be connected with –(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including

the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case there cannot be any dispute to the proposition that Group C and D employees of the Nigam are workmen within meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workmen raised a dispute as against their employment, the person regarding whose employment, non employment, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations, made by the Apex Court, are extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workmen with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment, is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was an employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial dispute" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an industrial dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) LLJ 256].

23. Now, it would be ascertained as to whether the dispute raised by Shri Mange Ram Sharma answers standard of being an industrial dispute. For that purpose, the Tribunal would take note of the fact that the claim statement was filed before the Tribunal by Shri Mange Ram Sharma in his individual capacity. However, in the claim statement, he projects that being the President of class III and IV staff union, he learnt on 17.02.2011 that the Nigam was trying to wriggle out of the medical policy, to be formulated on the strength of wage agreement dated 11.05.2010. He has also contended therein that he issued strike notice on 25.02.2011 when the Joint General Manager(HR) informed him that the Nigam has finalized name of United India Assurance Company Ltd. for the purpose of health insurance. It has further been mentioned that on 03.03.2011, union through its President, filed a rejoinder before the conciliation Officer. Therefore, facts detailed in the claim statement highlight that Shri Mange Ram Sharma projects that the claim was filed by him in the capacity of President of the union, though it has been signed by him in individual capacity.

24. Question for consideration would be as to whether President of a union alone is competent to raise an industrial dispute. To reach an answer to the above proposition, provisions of the Act and Industrial Disputes (Central) Rules, 1957(in short the Rules) are to be taken note of. Sub section (2) of the Act speaks that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to an industrial adjudicator, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. The word 'prescribed', as used in sub-section (2) of section 10 of the Act, gets meaning from the definition given in section 2(m) of the Act, wherein

it has been defined that 'prescribed' means, prescribed by Rules made under the Act. Rule 3 of the rules details as to how an application under sub-section (2) of section 10 of the Act would be made before the Authority under the Act. Rule 4 of the rules specifies as to who will sign an application under sub-section (2) of section 10 of the Act. For sake of convenience, provisions of Rule 3 and 4 are reproduced thus:

"3. Application.—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court, Tribunal or National Tribunal shall be made in Form A and shall be delivered personally or forwarded by registered post [to the Secretary to the Government of India in the Ministry of Labour and Employment (in triplicate)] the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central), and the Assistant Labour Commissioner (Central) concerned. The application shall be accompanied by a statement setting forth—

(a) the parties to the dispute;

(b) the specific matters in dispute;

(c) the total number of workmen employed in the undertaking affected;

(d) an estimate of the number of workmen affected or likely to be affected by the dispute; and

(e) the efforts made by the parties themselves to adjust the dispute.

4. Attestation of application.—The application and the statement accompanying it shall be signed—

(a) in the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen, or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose;

(c) in the case of an individual workman, by the workman himself or by any officer of the trade union of which he is a member or by another workman in the same establishment duly authorized by him in this behalf: Provided that such workman is not a member of a different trade union.

25. As noted above, Rule 3 of the Rules makes it clear that application shall be made in Form A appended to the Rules. Format provided by Form A, will also indicate as to who can make application and by whom it would be signed. For sake of convenience, Form A as appended to the Rules, is extracted thus:

Form A

(See rule 3)

"Whereas an industrial dispute exists between—and_____ and it is expedient that the matters specified in the enclosed statement which are relevant to the dispute should be referred for adjudication by a Tribunal for investigation and settlement, an application is hereby made under sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 that the said dispute should be referred to a Tribunal.

This application is made by the undersigned who have/has been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the ———————— held on the ————————20—.

A statement giving the particulars required, under Rule 3 of the Industrial Disputes (Central) Rules, 1957 is attached.

Signature of the President of the trade

Union/Secretary of the trade union"

26. As provided in Form A, the application shall be signed by the President and Secretary of the union. The application shall contain information to the effect that the President and Secretary of the union were authorized to move the application on the strength of resolution adopted by majority of members present at the meeting. Resultantly, it is crystal clear that the President and Secretary of the union were to seek authority from the majority of the members for moving an application before the appropriate Government for raising the dispute under reference.

27. Evidently, claim statement filed before the Tribunal has been signed by Shri Mange Ram Sharma in his individual capacity. Whether Shri Mange Ram Sharma moved application before the Conciliation Officer, in accordance with the provisions of sub-section (2) of section 10 of the Act read with rules 3 and 4 of the Rules ? Answer lies in negative. As emerge out of order date 20.01.2010 passed by Senior Civil Judge, Patiala House Courts, New Delhi, Shri Mange Ram Sharma was in litigation with the General Sectary and the then President of the union. Order of the Senior Civil Judge was assailed before the High Court of Delhi and petition moved in that regard was dismissed vide order dated 21.07.2010. In special leave petition too, the High Court opted not to interfere with that order. Thus, it came to light that the General Secretary of the union was in litigation with Shri Mange Ram Sharma and there was no occasion for the General Secretary to join hands with the claimant when application under sub-section (2) of section 10 of the Act was moved before the Conciliation Officer. Thus, it is crystal clear that the application was moved by Shri Mange Ram Sharma in violation of the rules. Shri Sharma could not project that

the said application was filed by him with the authority of of majority members of the union. Resultantly, it is crystal clear that the application moved under sub-section (2) of section 10 of the Act was not in consonance with law and Shri Mange Ram Sharma was not competent to raise a dispute before the appropriate Government for adjudication. Therefore it is concluded that the dispute raised by Shri Mange Ram Sharma could not acquire status of an industrial dispute.

28. For sake of argument, presuming that the dispute had acquired status of industrial dispute, even then, I find no merits in the claim put forth by Shri Sharma. Ex.WW1/20 contemplates that the scheme facilities would be applicable to the employees of the Nigam till it prepares its own health scheme, including medical insurance. No discrimination was made by the Nigam amongst its direct recruits and employees absorbed in its services, relating to health facilities. On 02.02.2004, insurance scheme in lieu of the scheme facilities was approved by the Nigam, as testified by Shri Saxena. At the time of absorption of the employees, it was decided that insurance scheme, if any, would be introduced in consultation with the majority union. On 23.12.2005, a meeting took place with the majority union relating to implementation of medical insurance scheme. In that meeting, it was decided to implement medical insurance scheme with effect from 15.01.2006, besides decision on modalities of that scheme. Ex.MW1/W1 is the copy of minutes of the aforesaid meeting while Ex.MW1/W2 projects attendance of participants along with their signatures, in the meeting. Ex.MW1/W1 was circulated to various authorities, including office bearers of the union vide letter dated 26.12.2005, copy of which is Ex.MW1/W3. When these documents are scanned, it came to light that the majority union was consulted by the Nigam and thereafter steps for implementation of the medical insurance scheme were taken.

29. After September 2006, the Nigam switched over to the new in-house scheme based on the service empanelment of hospitals. Ex.MW1/W1 projects consultation with the majority union. A meeting took place with the majority union on 23.02.2011 and 25.02.2011. Copy of minutes of the meeting were placed over the record as Ex.MW1/W6 and Ex.MW1/W5 respectively. Ex.WW1/38 highlights that notice of the meeting dated 25.02.2011 was served on the union. This document makes it apparent that Shri Mange Ram Sharma had knowledge that meeting was to be held on 25.02.2011, Shri Saxena made it clear that he personally called Shri Mange Ram Sharma and informed him about the meeting to be held on 25.02.2011. Out of the facts referred above, it came to light that the majority union was consulted in meeting dated 25.02.2011 and thereafter circular MTNL/Co/Pers/Med.ins.we.20911/622 dated 09.03.2011 was issued. Implementing that circular, circular No. MR/Cir/2008-09/35 dated 15.03,.2011 was issued. When there was proper consultation in consonance with clause 4.2 of the wage settlement proved as Ex.WW1/31, it does not lie in the mouth of the claimant to assert that the said circular is incompetent.

30. On the strength of the said circular, insurance health scheme was put in service for a period of two years. The said insurance policy expired on 10.02.2013. Vide letter dated 10.02.2013, the majority union made representation to the Nigam to discuss medical policy after 10.03.2013. The Nigam, held a meeting on 27.02.2013, with the recognized union and in the said meeting, renewal of group health insurance scheme with effect from 10.03.2013 was supported and approved by the majority union. Letter dated 15.02.2013, written by the General Secretary of the union would reflect that initiative was taken by the majority union for discussion on renewal of group health insurance scheme. For sake of convenience, contents of the said letter are reproduced thus:

> "As you are aware, that the term of existing medical policy is to expire next month. It is, therefore, expedient to review existing arrangement and evolve a medical policy in agreement with the recognized unions before we enter into an agreement with any agency to provide medical services to MTNL workers. Kindly arrange to fix a meeting with union representatives in this regard."

31. As projected by the Nigam, a meeting took place with the majority union on 28.02.2013. Minutes of the meeting are reproduced thus:

> "As per approval of Competent Authority, a meeting under the chairmanship of GM(HR) was held with the representatives of the recognized union of MTNL, Delhi Union on 27th February, 2013 at 11.30 a.m. in Conference Room, 6th Floor, MTNL corporate Office, CGO Complex, Lodhi Road, New Delhi to discuss about the renewal of Group Health Insurance Scheme for MTNL working employees with effect from 10th March, 2013.
>
> The participants attended as per attendance sheet (enclosed).
>
> At the outset, GM(HR) welcomed all participants and briefed about the steps taken for renewal of Group Health Insurance Scheme for MTNL working employees with effect from 10.03.2013.
>
> General Secretary, MTNL Mazdoor Sangh, the Recognized union in MTNL Delhi supported the renewal of GHIS for MTNL working employees from 10th March, 2013. However, he also raised following points related with the administration of the scheme in MTNL Delhi:

- Problems in getting cashless treatment
- Clarification regarding inclusion of any two children in place of first two children
- Poor response from TPA help desks
- Problems in billing in certain hospitals

Joint General Manager explained the position in respect of each of the above points and sought the co-operation of the recognized union in smooth functioning of the scheme.

General Secretary, MTNL Mazdoor Sangh once again reiterated the support of the recognized union for the renewal of the scheme with effect from 10th March, 2013 and requested MTNL Management to clarify the above points at the earliest.

The meeting ended with a vote of thanks."

32. From letter dated 15.02.2013 and minutes dated 28.02.2013, it came to light that the majority union supported and approved renewal of group health insurance scheme with effect from 10.03.2013. These facts make it apparent that the health insurance scheme was initially formulated by the Nigam and implemented with the approval and support of the majority union. Renewal of health insurance scheme was also supported and approved by the majority union. In view of these facts and circumstances, it does not lie in the mouth of the claimant to assert that group health insurance scheme was formulated by the Nigam without consultation of the majority union, in violation of provisions of clause 4.2 of the wage agreement, Ex.WW1/31.

33. Whether group insurance scheme is less beneficial than the scheme? For an answer to this proposition, the Nigam has given a comparative chart, contents of which are detailed below:

Particulars	In House Scheme (upto 09.03.2011)	Insurance Scheme (From 10.03.2011)
Room Rent Entitlement	Rs. 400 and Rs. 600 for Group D and Group C respectively	Room Rent entitlement enhanced to Rs.1200 and Rs.1800 respectively
Empanelled Hospitals	Around 40 hospitals in Delhi/NCR	Around 4000 hospitals Pan India
Doctors visit	Capping of Rs. 61 per visit	No such capping on Doctor's visit
Cataract	Capping of Rs. 13500.00	Capping of Rs. 20000
Hernia	Capping of Rs. 16000.00	Capping of Rs. 35000
Hysterectomy	Capping of Rs. 20000.00	Capping of Rs. 45000
Maternity	Normal delivery – capping of Rs.8080 and Caesarean Section- Capping of Rs.15000.00	Capping of Rs. 40000
Cardiac Surgery	Capping of Rs.133650.00	No such capping
Other major diseases	Capping on each individual disease/ procedure	No such capping
Place of treatment	Confined to Delhi/NCR	Not confined to Delhi/NCR but PAN India
Pre and Post Hospitalization Benefit	Not available	Pre-hospitalization 30 days cover and Post hospitalization 60 days cover, subject to Rs. 20000

34. Shri Tyagi could not dispel contents of the chart referred above. When the claimant could not point out that cap of Rs. 6 lakh kept in group insurance health insurance scheme is less beneficial, in that situation, facts presented by the Nigam are to be accepted. As detailed above, group health insurance scheme cannot be termed as less beneficial than the scheme. On that count too, claim put forth by Shri Mange Ram Sharma is found not to be justified. Resultantly, it is concluded that action of the Nigam in extending medical facilities to its employees through insurance company is legal as well as justified. No indulgence from this Tribunal is accorded, since employees of Group C and D of the Nigam are getting better medical facilities. Claim put forward is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 9.4.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2014

का.आ. 1363.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा डायरेक्टर जनरल ऑफ वर्क्स, सेंट्रल पब्लिक वर्क्स डिपार्टमेंट, नयी

दिल्ली के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 दिल्ली के पंचाट (संदर्भ संख्या 28/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/17/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 22nd April, 2014

S.O. 1363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 28/2008) of the Central Government Industrial Tribunal/Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Director General of Works, Central Public Works Department, New Delhi and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-42011/17/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO. 33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI-110 032

Present : Shri Harbansh Kumar Saxena

ID No. 28/2008

The General Secretary,
CPWD Mazdoor Union,
Room No. 95, Barrack No. 1/10,
Jamnagar House, Shahjhan Road,
New Delhi-110011

Versus

The Director General of Works,
CPWD, Nirman Bhawan,
New Delhi.

EXPARTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/17/2008-IR(DU) dated 04/06/2008 referred the following Industrial Dispute to this tribunal for adjudication :-

> "Whether the contracts between the management of CPWD, and the contractors mentioned under column 9 if the Annexure, with regard to employment of the workmen listed under column 2 of the Annexure, are sham and bogus? If yes, then whether the demand of CPWD Mazdoor Union for regularisation of their services by the management CPWD is legal and justified? If yes, to what relief the respective workmen are entitled to ?"

On 14/7/2008 reference was received in this tribunal. Which was register as I.D No 28/2008 and claimant were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After Service of Notice Workmen filed Claim Statement through which they claimed that tribunal may kindly award that the workmen connected with the dispute are entitled to be regularized in their respective category and till their regulation they are also entitled minimum of time scale plus all allowance as the daily rated workers have been getting the wages from their initial employment from the Management of CPWD.

Management after service of notice management has not filed written statement so case proceeded Ex- parte on 21/1/2010 against management.

Out of 162 workmen only following workman namely Man Mohan Malviya, Firoz Ahmad, Binod Singh, Ashish Pathak and Amit Kumar Sharma have filed affidavit in evidence in support of their case. In addition to it Sh. Bhoop Singh also filed affidavit as corroborative evidence who is representative of CPWD , Mazdoor Union through which workmen raised present Industrial Dispute. Thereafter workmen closed their evidence.

So their remains following workmen who have not filed affidavit in support of their claim statement.

1. Dinesh Kumar
2. Sanjay Sahariya
3. Jagdish Prasad Kewat
4. Deewan Singh Thakur
5. Vishnu Verma
6. Sunil Choure
7. Deelip Yadav
8. Sanjay Kumar Bourasi
9. Santosh Kumar
10. Arvind Kumar
11. Bahadur Singh Rajpur
12. Dinesh Kumar Raikwar
13. Phanil Das
14. Suren Gurung
15. Md. Sahjahan Ali
16. Rajesh Kumar
17. Solan Singh
18. Eswar
19. Ashok Kumar
20. Rajesh Chauhan
21. Jay Singh Rajpur
22. Dharmender Yadav
23. Sony Varma
24. Anand Subeshiya
25. Babu Singh Chauhan

26. Manish Kushwaha
27. Santosh Sirsath
28. Devender Shangte
29. Kailash Chandra Chauhan
30. Rajender Akhand
31. Ram Chander Varma
32. Vikash Loti
33. Jay Narayan Paliwal
34. Ram Prakash Verma
35. Ratan Singh
36. Kalyan Jalai
37. Sunil Kumar Sharma
38. Jagdish Gothwal
39. Deepak Parik
40. Dinesh Kumar Rao
41. Fariyad Ahmad
42. Ram Kishore Sain
43. Ravi Kumar
44. Prem Singh
45. Manish Kumar Bairwa
46. Parmod Kumar Sharma
47. Salim Khan
48. Brij Mohan Chitra
49. Mahesh Kumar
50. Mohd. Akram
51. Ansar Pasha
52. Gaddala Sree Ramlili
53. M.D. Islam
54. Mohd. Aziz
55. Kurban Ansari
56. Hasumuddin
57. Amarnath
58. Avdesh Kumar
59. Vinod Kumar
60. Bablu
61. Manish Kumar
62. S.K. Nagoor Meera
63. Korada Satyanarayan
64. P. Umanageswara
65. Huru Sarkar
66. Rahul Tanwar
67. Ram Avtar Ram
68. Jai Raj
69. Palisetty Kumar Venkateshwara Rao
70. Diwakar Jaina
71. Subhas Ch. Dass
72. Paramanand
73. Subhash
74. Jeewan Singh
75. Pitsbash Sahu
76. Ranjan Ku. Subudhi
77. Akshyaya Ku. Behera
78. Paramanand Dass
79. P. Bhaskar Rao
80. P. Venkateshwar Rao
81. P. Sudhakar
82. Adit Pratap Singh
83. K. Suryanarayan
84. Md. Mohtaz Ali
85. Ratan Lakhar
86. Md. Makib Ali
87. Md. Maziban Rahman
88. Ramesh Yadav
89. Ramu
90. Dhaamvir Pathak
91. Kommuri Rama Mohan Rao
92. M.S. Prakash
93. Md. Jaffar Hussain
94. B.Simhachalam
95. M. Giri Babu
96. Amjala Lakshmi Narayan
97. Kona Anthony
98. Vegi Srinivas
99. Medidi Srirama Kumar
100. Palistty Seshagirirao
101. Dukka Srinivasa Rao
102. Dalai Satya Kumar
103. Pradip Mandal
104. Dijan Mandal
105. Manohar Jha
106. Satinder Kumar
107. Ashok Kumar Ram
108. Rajesh Kumar
109. Anirudh Mahali
110. Dalip Kumar Mandal
111. Mohd. Aslam
112. Mohd. Kurban Ansari
113. Modh. Aziz
114. Pradeep Gope
115. Suresh Kumar
116. Dalip Goswami
117. Kanak Ch. Das
118. Mrs. Bindu Danja
119. Gopu Ratna Rao
120. Suren Kalita
121. Moti Lal
122. Uttam Chandra
123. Ashok Sasre
124. Somnath Chandre
125. Dalip Chandre
126. Sadhu Tapkir
127. Ramdas Thapkir
128. Krushna Kadam
129. Anil Lada

130. Kishan Kakade
131. Prakesh Shinde
132. Ram Das Kumble
133. Rohidas Kumble
134. Dattu Pawan
135. Yogesh M. Arude
136. Til Kumar Shirish
137. Dhan Bahadur Gaha
138. Chadhary Nath Sahib Dasrath
139. Gole Rajendra B.
140. Desraj Sharma
141. Pradeep Kumar
142. Rabi Darjee
143. Monu Darjee
144. Ugen Sherpa
145. Amar Darjee
146. Dharmeshwar Nath
147. Balwinder Singh
148. Gokal Chand
149. Dilbag
150. Addepalli
151. K. Ramesha
152. R. Nagaraj
153. Davis Dass
154. G. Sathiskumar
155. A. Allauddin
156. Liyaz Ahmed
157. Nagraj Pandre

Ld. A/R for workmen orally argued as well as filed written argument on 4/10/2010.

Through written argument he stressed as follows:-

1. That the appropriate Government in the Ministry of Labour, Government of India, New Delhi has referred the dispute to this Hon'ble Tribunal for adjudication vide its Order No. L-42011/17/2008-IR(DU)) dated 04/06/2008 with the following terms:

SCHEDULE

"Whether the contracts between the Management of CPWD and the contractors mentioned under column 9 of the Annexure, with regard to employment of the workmen listed under column 2 of the Annexure, are sham and bogus? If yes, then whether the demand of CPWD Mazdoor Union for regularization of their services by the management CPWD is legal and justified? If yes, to what relief the respective workmen are entitled to ?"

2. That the details of workmen i.e. Name, Father's name, Designation, Status, Date of Employment, Duty Place and name of the contractor etc. are mentioned in the list attached with the reference and their names etc. were mentioned in para 2 of the Statement of Claim also.

3. That 162 workmen connected with the dispute were engaged through the contractors on a perennial nature of job with a view to exploit these workforce, deny the regular status and equal pay for equal work. They have been performing their duties under the officials of the management of CPWD like Junior Engineers, Assistant Engineers and Executive Engineers concerned as the case may be and the contractors have/had been performing the duties of a cashier.

4. That the workmen have completed more than 240 days of continuous service in each of the calendar year so they acquire the status of a regular workman of the management of CPWD.

5. That the contractors neither has license for engagement of contract labourers nor the management of CPWD being principal employer procured registration as required under the Contract Labour (Regulation and Abolition) Act, 1970 to engage contract labourers through Contractor (s) thereby violated the provisions of the said Act. So the workmen are entitled regular status and absorbed being direct employees of the management of CPWD, so get all benefits as that of regular and daily rated workmen directly employed by CPWD. It is also submitted that there was no genuine contract. Hence the workmen on completion of 240 days are entitled to be absorbed with the management of CPWD.

6. That the workmen are performing the duty on a perennial nature of job so all are direct employees of the Management, if the veil is lifted by this Hon'ble Tribunal will come to know how the management of CPWD is committing unfair labour practice and run counter to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, they may be absorbed being direct employees of Management.

7. That all the workmen who are working as unskilled, semi-skilled, skilled etc. workmen connected with the dispute are having the technical qualifications for regularization of their service under the management of CPWD and for other workman working on unskilled category are entitled for regularization without any technical qualification as both type of categories have also acquire sufficient experience for working in the different categories i.e. unskilled, semi-skilled, and skilled with the management of CPWD.

8. That even the Ministry of Labour in exercise of powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government, in consultation with the Central Advisory Contract Labour Board, prohibited the employment of the contract labour in the process, operation or work specified in the Schedule, in the office / establishment of Central Public Works Department, Ministry of Urban Development and Employment, New Delhi and the Notification for prohibiting the employment

of Khalasi etc. were notified by the Ministry of Labour Notification dated 31.07.2002 the Extra-Ordinary Gazette of the Govt. of India in Para II Section 3 and Sub-Section (2). Copy of the notification is annexed as Annexure-III with the statement of claim and the same is exhibit WW1/1.

9. That as per notification dated 31.07.02 of Ministry of Labour, New Delhi the employment on the following establishments are prohibited for employing the contract labour in the office / establishment of C.P.W.D. w.e.f. 31.07.2002 i.e. is the date of publication namely:

i. Air Conditioner Mechanic
ii. Air Conditioner Khalasi / Helper
iii. Electrician
iv. Wireman
v. Khalasi (Electrical)
vi. Carpenter
vii. Mason
viii. Fitter
ix. Plumber
x. Helper / Beldar
xi. Mechanic
xii. Sewerman
xiii. Sweeper
xiv. Foreman

10. That it is proved by the evidence of Shri Bhoop Singh WW1/A the work on which the workmen have been performing their duties can not be handed over to the contractors, so they have to be treated the direct employment of CPWD and their status are of a daily rated worker directly employed by the management.

11. That after the said Notification the workmen connected with the dispute who are covered in employment as referred herein above were to be treated as direct employment of the management of CPWD and their status is of a daily rated workers directly employed by the management. Copy of the order in respect of payment of equal pay for equal work by the CPWD are already annexed as Annexure-I & II with the statement of claim and the same are exhibit WW1/2 and WW1/3 respectively.

12. That the activities of the management are of plantations, work relating to the construction, developments of park, maintenance of buildings, roads, bridge etc. are covered under the section (2) (e) and (g) of The Payment of Wages Act, 1936 thereby the said establishment are also covered under the provisions of Industrial Employment (Standing Orders) Act, 1946 and according to the model standing orders, the workman is acquire after completion of three months (90 days) the status of a permanent workman and according the workmen connected with the dispute be treated as working on officiating / acting capacity on the said post and acquire the permanent status of after completion of 90 days and their services have to be declared as permanent employee of the management as per the Model Standing Orders under Industrial Employment (Standing Orders) Act, 1946 as the activity is the CPWD is covered under the payment of wages Act, thereby the employment is covered under the said Industrial Employment Act.

13. That the duties have been performed by the workmen are of perennial in nature and the said jobs cannot be awarded on contract basis through Contractor.

14. That in the CPWD, the daily-rated workers in all the categories have been getting their wages in minimum of time scale plus DA, ADA, HRA, CCA, IR, except increment but the workman connected with the dispute are even denied minimum wages fixed under the Minimum Wages Act, 1948 from time to time by the appropriate Government to the different categories. Now these workers are also entitled to the same wages paid to the daily rated workers in CPWD i.e. fixed in the minimum of time scale along with all allowances accept increment from the date of their initial employment being unskilled, semi-skilled, skilled and highly workmen. Copy of the order dated 21-10-90 and 28-01-91 are annexed as Annexure1 & 2 with the statement of claim and the same is exhibit WW1/2 and WW1/3 respectively.

15. That the following time scale fixed to the different categories working in the CPWD as regular workman on work charged establishment:

Status	Time scale Prior to 01.01.1996 with all allowances	Time Scale Fixed w.e.f. 01.01.1996 with all allowances
Skilled	950-1500	3050-4590
Semi Skilled	810-1150	2650-4000
Un Skilled	750-940	2550-3200

16. That the daily rated workman on muster roll/hand receipt have been getting their wages in the minimum of scale i.e. Rs. 950, 3050, 810, 2650, 750, and 2550, 3200 along with all allowances accept increment till their service will be regularized but these workmen connected with the dispute are even denied the minimum wages fixed for unskilled, semi skilled or skilled.

17. That now the daily rated workmen were getting higher wages equivalent to their regular counterpart in the work charge establishment w.e.f. 1-1-2006 after implementation of 6the Pay Commission.

18. That as per the judgement of the Hon'ble Supreme Court in the matter of Sh. Surender Singh and Others V/s Engineer-in-Chief CPWD the daily rated workers are also entitled to be regularized in the time scale after completion of 6 months of their continuous services but the management has decided to consider for regularization of

the services of those persons who completed 240 days in a two consecutive year.

19. That the management is an Industry governed by the provisions of Industrial Disputes Act, 1947 as well as the provisions of the Industrial Employment (Standing Orders) Act, 1946 and as per the schedule 1 the classification under the MODEL STANDING ORDERS IN RESPECT OF INDUSTRIAL ESTABLISHMENT NOT BEING INDUSTRIAL ESTABLISHMENT IN COAL-MINES ARE AS UNDER:

"2. Classification of workman:- (a) workman shall be classified as under:-

(1) Permanent

(2) Probationers

(3) Badlis

(3-A) fixed term employment [Inserted by GSR 936 (E), dated 10th December, 2003 (w.e.f. 10th December, 2003)].

(4) Temporary

(5) Casual

(6) Apprentices.

(b) A "permanent workmen" is a workman who has been engaged on a permanent basis and include any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment/

(c) A"Probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein if a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.

(d) A "badli " is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

(e) A"temporary workman" is a workman who has been engaged for work which is of a essentially temporary nature likely to be finished within a limited period.

(f) A"casual workman" is a workman whose employment is of a casual nature.

(g) An "apprentice" is a learner who is paid an allowance during the period of his training.

3(h) A "fixed term employment workman" is a workman who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits available to a permanent workman proportionately according to the period of service rendered by him even through his period of employment does not extend to the qualifying period of employment required in the statute.

20. That the workmen connected with the dispute are entitled to be regularized in their respective category and till their regularization they are also entitled minimum of time scale + all allowances as the daily rated workers have been getting the wages from their initial employment from the Management of CPWD.

21. That the facts of the case the workmen were performing their duties under the control and supervision of the Management being the work of a perennial in nature, the relation exists between the workmen and the Management so they have to be treated as direct employees of the Management of CPWD.

22. That the Constitutional Bench of the Hon'ble Supreme Court has settled the relationship between the workmen and the management in the matter of Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors (2001) 7 SCC.1. The relevant para of the said judgement i.e. 125(5) and (6) settled the proposition of law between the principal employer and the contract labour if the Contract Labour who was employed in a camouflage manner then they are treated the direct employee of the principal employer, and the same is reproduced as under:

> "125(5) on issuance of prohibition notification under Section 10(1) of the CLRS Act prohibiting employment of contact labour it by any contract labour in regard to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
>
> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government prohibiting employment of contract labour in any process, operation or other work of other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found

suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

23. That the Management in this case did not obtain the registration certificate u/s 7 and the so-called Contractor was not licensed contractor under section 12 the Contract Labour (Regulation & Abolition) Act 1970, so the contract was mere sham, camouflage and illegal. Therefore, the workman has to be treated as direct employees of the Management of PWD. In another Judgement of Hon'ble Supreme Court in the matter of Secretary, Haryana State Electricity Board and Suresh & Others (1999-I-LLJ-1086) has dealt the case of Dinanath & Ors. Vs. National fertilizers Ltd. & Ors (1992-I-LLJ-289) has held that if the principal employer did not having the registration etc. between then the linkage between the contractor and the employees stood snapped and direct relationship stood restored the principal employer and the contract labour as its employees. The operative portion of para 18 of Secretary, Haryana State Electricity Board and Suresh & others (1999-I-LLJ-1086).

"18. Reliance on the decision in the case of Dinanath & Ors V. National Fertilizers Ltd. & Ors. (1992-LLJ-289) (SC) in support of the Board's contention, however, stands diluted by reasons of the decisions of this Court in Gujarat Electricity Board Vs. Hind Mazdoor Sabha & Ors (1995-II-LLJ-790) (SC) and Air India Statutory Corporation etc. Vs. United Labour Union & Ors. etc. (supra). The ratio as has been decided in Air India's case appears to have softened the edges of Dinanath's ratio. While dealing with this issue in Air India's case (supra), this Court has, as a matter of fact takes note of more or less the entire catena of cases pertaining to contract labour and we do thus feel it wholly unnecessary to deal with the same in extensor excepting however recording some observations of this Court in Air India's case (supra) as below:-

"In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contract and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

24. That in the said judgment of Hon'ble Supreme Court in the matter of Secretary, Haryana State Electricity Board and Suresh & others (1999-I-LLJ-1086) has also held that if the so called contractor was mere name lender, who procured labour for appellant Board as broker, Board was not principal employer-so called contract was mere camouflage which concealed real relationship of the employer employees. The workmen also relied the relevant para 8, 17, & 19 of the said judgment.

25. That the Hon'ble Supreme Court in Hussainbhai, Calicut and Alath Factory Thoshilali Union, Calicut and others [1978-II-LLJ-397] has held that Contractor in this case is only supplying the labour for performing the work of principal employer, so the workman have to be treated as direct employees of the principal employer. The workmen relief on para 5, 6 & 7 of the said judgement.

26. That on the question of control and supervision etc. the Hon'ble Supreme Court in the latest judgement in the matter of M/s. Bharat Heavy Electricals Ltd. (Appellant) v. State of U.P. and others (Respondents) 2003 Lab. I.C.2630 have held in para 11, 12, 13, &14.

27. That the Hon'ble Supreme Court in the matter of M/s. Indian Farmers Fertilizers Co-op. Ltd., Appellant V. Industrial Tribunal-I, Allahabad and others, Respondents [2002 LAB. IC. 1091] decided that the circumstances, nature of employment whether directly under appellant or through contractor is necessarily to be decided on the basis of evidence adduced by the workman as well as Management before the Industrial Tribunal. The workman relied on relevant para 5 of the Judgement.

28. That the recent Judgement of Hon'ble Supreme Court dated 26th September, 2006 in the matter of Steel Authority of India Ltd. Vs. Union of India & Ors [2006 VIII AD(S.C.) 381 has held that Industrial Court has only the jurisdiction to decide whether the contract was really a camouflage or sham one as decided by the Constitution bench of Hon'ble Supreme Court of India in the matter of Steel Authority of India Ltd. and Others Vs. National Union Waterfront and Others [(2001)7 SCC 1] is still in the field. The workman relied on para 9 & 10 of the said judgment.

29. That as per the facts of this case, evidence adduced by WW1, it is proved that in this case the contract was not genuine, as camouflage to evade compliance with the beneficial legislation like the management in this dispute, is not a principal employer, because there was no genuine contract system, as they have not got registered and the contractor was not a licensed contractor, so the workmen have to be treated as direct employees of the PWD.

30. That as per the order dated 18-01-1991 Exh. WW1/2 & WW1/3 the daily rated workers under the Management have been getting their wages as equal pay for equal work i.e. minimum of time scale plus all allowance except increment. Accordingly, the workmen connected with the dispute is entitled equal work as per rule 25(2)(v)(a) of Central Rules framed under Contract Labour (Regulation

& Abolition) Act,1970. The Hon'ble Supreme Court in the matter M/s Food Corporation of India Vs. Shyamal K. Chattergee and others…Respondents 2000 LAB I.C. 3323 has held that contracts labour are entitled the wages paid to the casual workers doing same job are entitled to wages on par with class IV employee. The workmen relied on para 5&7 of the said judgement.

In view of the above, the contract was sham, comaufledge and the job are of perennial in natures and even the work of various categories like Air Conditioner Mechanic, Khalasi/Helper, Electrician, Wireman, Khalasi (Electrical), Carpenter, Mason, fitter, Plumber, Helper/ Beldar, Mechanic, Sewerman, Sweeper & foreman abolished w.e.f.31-07-2002 by the Ministry of Labour, Govt. of India (Exh. WW 1/1) so this Hon'ble Tribunal treat the workmen connected with the dispute the direct employee of the Management of CPWD and treat them like daily rated worker/casual worker and even some category of workmen are performing the duty on perennial nature and they have direct relationship of employer and employees between the Management of CPWD and their workmen connected with the dispute.

On the basis of aforesaid grounds Ld A/R for the workmen prayed as follows:-

Award to issue the directions to the Management of CPWD to initiate the process for regularization of the services of the workmen by relaxing age etc. as per rules with their seniority and also pay equal pay for equal work from the respective date of their employment in the Minimum of time scale alongwith all allowances except increment till the date of regularization within one month of publication of the Award failing which the Management may be directed to pay Bank interest per annum.

Ld A/R for the workmen placed reliance on Judgment/ Award Dated: 30/04/2004 passed by Sh. B.N Pandey P.O. CGIT New Delhi. ID.74 of 1996.

Sh. Kali Charan & Others, Through General Secretary, CPWD Mazdoor Union, E-26 (Old Qutrs.), Raja Bazar, Baba Kharak Singh Marg, New Delhi.

Through which P.O. directed the Management of CPWD to consider the regularization of the services of the workmen by relaxing age etc. as per rules and vacancies in accordance with their seniority and also pay equal pay for equal work from the respective date of their employment in the minimum of time scale of Group-D employees alongwith all allowances except increments till the date of regularization within one month of publication of the award, failing which the management will be liable to pay interest @ 6% per annum. Parties shall bear their own cost.

Management of CPWD had challenged the aforesaid award by way of filing writ petition No. WP(C)12068/2005. Aforesaid writ-petition was admitted subject to deposit of certain amount of salary.

16 workers applied for interim relief by way of moving application for release of amount, out of amount deposited by writ petitioners. On which Hon'ble High Court on 09/02/2012 passed the following order:-

"Considering all the facts and circumstances, these applications are allowed. The sixteen workers, named already, without prejudice to the contentions of both the parties which they would be making at the time of final hearing of the writ petition, are granted interim relief of payment of Rs. 50,000 each out of the money which is lying deposited with this court though they have claimed that their share in that would be more than two lacs. The registry shall complete the entire exercise of releasing money to the workers within three weeks after filing of the undertakings by the workman which they shall furnish within three weeks. These applications stand disposed of accordingly."

In this background Ld A/R for workmen stressed that case of workmen is similar to the case of workmen of the award dated 30/04/2004.

Thus the workmen of the instant case entitled to the same relief which was granted to workmen of ID. 74/96.

In the light of contentions of Ld A/R for the workmen I perused the pleadings and evidence of workmen on record as case proceeded Ex-parte against management including the settled law on the point and relevant provisions of concerned law and case law on the point.

It is admitted fact that case of industrial dispute is a case of civil nature. Which is decided on the basis of pleadings of the parties and their evidence.

It is also admitted fact that standard of evidence in civil case is preponderance of evidence.

On aforesaid grounds their appears two categories of workmen in the instant case as follows:-

1. Who have filed their evidence by way of filing their affidavits namely. Man Mohan Malviya, Firoz Ahmad, Binod Singh, Ashish Pathak and Amit Kumar Sharma.
2. Who have not filed their evidence by way of filing their affidavit they are 157 in numbers whose names have already been mentioned above.

The Hon'ble Supreme Court in case of Indian Petrochemicals Corporation Ltd. Vs. Shramik Sena and others (1999)-3078, have decided that when the contract labour is treated direct employees of the management for all purposes and the regularization was granted by the court not as a matter of right of the workmen arising under any statue but with a view to eradicate unfair labour practice and inequity to undo any social justice and as a measure of labour welfare.

It is proved by the evidence that one of the major conditions for employement of contract labour i.e. registration by the principal employer i.e. CPWD is lacking

and even the contractors are not having license for supplying the contract labour and the workmen connected with the dispute have to be treated as direct employees of the CPWD as per the direction of the Constitutional Bench of Hon'ble Supreme Court decided in Steel Authority of India Ltd. (SAIL) case. In another case, the Hon'ble Supreme Court between the Secretary, Haryana State Electricity Board and Suresh & others (1999-I-LLJ-1086) also held that if the so called contractor was mere name lender, who procured labour for appellant Board as broker, Board was not principal employer-so called contract was mere camouflage which concealed real relationship of the employer employees.

The workmen also placed the notification dated 31.7.2002 issued by the Ministry of Labour, Govt of India, New Delhi during the pendency of the dispute which prohibited the employment of contract labour in the process/operation or work specified in the schedule and according to the said Notification the employment of Wireman , Pump Operator and Khalasi are also prohibited in the establishments of CPWD . The notification is published in the Gazette of India Extraordinary Part-II Section 3- Sub- section (ii) dated 31st July 2002. On the basis of evidence adduced by both the parties , documents placed on record and different judgements Hon'ble Supreme Court. I came to the following conclusions.

The principal employer is not registered u/s 7 and the contractors are not licensing contractors u/s 12 of Contract Labour (Regulation and Abolition) Act 1970 ,and no beneficial provisions under Contract Labour (Regulation and Abolition) Act 1970 have been provided to the workmen connected with the dispute therefore, the contract is not a genuine contract, so the workmen have to be treated direct employees of CPWD.

As per the Notification dated 31.7.2002 of the Ministry of Labour, Govt. of India, abolishing the employment on the work of sweeping (Sweeper) of contract labour in the process, operation or work in the offices/ establishments of CPWD , Ministry of Urban Development and Employment, the workmen connected with the dispute also have to be treated the direct employees of CPWD.

In accordance with para 125(5 and 6) of the judgment of Constitutional Bench of Hon'ble Supreme Court in the matter of SAIL, [2001 7 SCC] the workmen are entitled to be considered for regularization by the management of CPWD by relaxing the condition of maximum age at the time of initial employment as contract labour and till the regularization the workmen have to be treated as daily rated/casual workers of CPWD.

Till the regularization the workmen have to be treated as daily rated/casual workers of CPWD and also entitled equal pay for equal work because the other daily rated workers of CPWD have been getting their wages in the Group-D employees pay scale including all allowances except increments as per the judgement of Hon'ble Supreme Court in the matter of Surinder Singh & Others Vs. Engineer-in-Chief, CPWD and Another.

As per the judgement of Hon'ble Supreme Court in the matter of Food Corporation of India, Appellant V. Shyamal K. Chatterjee and others, Respondents have held that since some casual workers appointed directly by the appellant and some employees by the contracts are working the same duty, so the contract labour is also entitled the same pay and allowance.

So, the five workmen of the Ist Category namely Man Mohan Malviya, Firoz Ahmad, Binod Singh, Ashish Pathak and Amit Kumar Sharma can be said to have proved their case of claim statement through their evidence hence reference is liable to be decided in their favour and they are entitled for relief hence their claim is allowed.

But the 157 workmen of the 2nd category in want of their substantive evidence to prove their case of claim statement they are not entitled to any relief hence their claim is dismissed. Evidence of co-workmen and WW1 Sh. Bhoop Singh on record is of no avail to them as it will come within the ambit of corroborative evidence. Which cannot be used as substantive evidence for the workmen who gives their no substantive evidence in their claim.

On the basis of aforesaid discussion I am of considered view that there is a direct relationship of employer and employee's of Ist Category of workmen between the management of CPWD and workmen, and direct the management of CPWD to consider the regularization of the services of the workmen of the Ist Category namely Man Mohan Malviya, Firoz Ahmad, Binod Singh, Ashish Pathak and Amit Kumar Sharma by relaxing age etc as per rules and vacancies in accordance with their seniority and also pay equal pay for equal work from the respective date of their employment in the minimum of time scale of Group-D employees alongwith all allowances except increments till the date of regularization within one month of publication of the award, failing which the management will be liable to pay interest @ 6% per annum. Parties shall bear their own cost.

The reference is decided in favour of workmen of 1stcategory namely Man Mohan Malviya, Firoz Ahmad, Binod Singh, Ashish Pathak and Amit Kumar Sharma only and decided against Management .

The Ex-parte Award is passed accordingly.

Dated : 31/03/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2014

का.आ. 1364.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर साइल कोन्सेर्वटिओन् डिपार्टमेंट दामोदर वैली कारपोरेशन हज़ारीबाग

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 86/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/36/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 22nd April, 2014

S.O. 1364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 86/2000) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Director, Soil Conservation Department, Damodar Valley Corporation, Hazaribagh and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-42011/36/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO. 86 OF 2000

PARTIES : The Secretary,
DVC Mazdoor Sangh, Maithon Unit,
PO: Maithon, Dhanbad.

Vs.

The Director,
Soil Conservation Deptt.,
Damodar Valley Corporation, Hazaribagh

Ministry's Order No. L-42011/36/2000/IR (DU) dt. 29.08.2000

APPEARANCES :

On behalf of the workman/Union : Union Representatives

On behalf of the Management : Mr. B.K. Jha, Ld. Advocate

State : JHARKHAND Industry : Energy

Dated, Dhanbad, the 31st March, 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-42011/36/2000/IR(DU) dt.29.08.2000

SCHEDULE

"Whether the refusal of the Management of M/s D.V.C. to provide regular employment to S/Sh Sambhu Nath Mahato and 74 others in the regular services of D.V.C. is justified? If not, to what relief the concerned workmen are entitled?"

On receipt of the Order No L-42011/36/2000/IR(DU) dt. 29.08.2000 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the Reference Case No. 86 of 2000 was registered on 13th September,2000 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The workman and the O.P./Management through their Lawyers appeared in, and contested the case.

2 The case of the workman as sponsored by the DVC Mazdoor Sangh is that the workmen concerned have been working as the Forest Labourer in the Forestry Division of the D.V.C., Maithan, and District Dhanbad under the direction of its Department of Soil conservation for more than 20 years. The nature of the work performed by them is permanent and perennial. At raising the matter of regularization by the workmen, the Labour Enforcement Officer ©, Chirkunda as per his Inspection Report No.26 (5) /2000/CKD dt.31.8,.2000 had several times directed to rectify the irregularities in payment of wages as per the rate prescribed by the Central Government and the technical estimate for payment of wages for the job of contract labour based on minimum wages as per the notification of the Bihar Government.Sri K.Mishra Director of Soil Conservation as per ref.No.SC/HRD/ME/1364 dt.27.10.2000 had instructed for compliance of the rules and orders of the Department. The Chief Engineer (Civil), DVC, Maithan Dam, as per letter No.CE-P/9-228 dt.11.9.2000 had regretfully accepted the engagement of the workers for the beautification of the Gardening etc. under the control of the Director, Soil Conservation, D.V.C., Hazaribagh and payment of lesser wages than minimum prescribed rate without intention of any victimization to them. As per the Circular Ref.No.PL-28/245 (Vol-6) Pt.63 dt.22.8.2000, the payment as per rate of minimum wages with fixed DA and increased DA, even for the weekly rest day to the Daily rated employees in Forestry/Timbering

operation in D.V.C. establishment was decided w.e.f. 1.10.1989 to 30.03.90, adjusting against the payment already made. When there was not any proper and adequate response of the Management ,Sri Sanjay Kr. Sahay, the Secretary of the Sangh raised the industrial dispute with all the relevant materials before the ALC ©,Dhanbad, for regularization of the enlisted workmen. Though the Management appeared in it, yet the conciliation proceeding failed, resulting in the reference for adjudication.

Further alleged by the Union Representative is that the employer in the Corporation Order No. 22.2418 and letter No.SC/28(W)/1991 dt.7.11.1990 had accepted the engagement of 80 as casual labourers, but without mention of the payment of minimum wages as the rate prescribed, FPF facility etc., and the duration of more than 12 years work of the workmen who would not remain on contract labour basis. There is no contractual agreement between any one and the corporation for the work done by the workmen with the equipment manner and fertilizer supplied by the D.V.C.Managment in the Project for beautification in its areas. Despite the divided procedure for payment of Forestry and the Department in different projects/plant for beautification work as per the Office Order dt.29.1195,the actual payment was rotationally in very month consequentively to 11 or more labourers without any Revenue Stamp, though Duty Registrar and Attendance Register daily maintained by regular Staff of the D.V.C.The working procedure time to time changed by the D.VC Establishment No. D.V.C. Establishment at Maithan is registered under Contract Labour (Regularization & Abolition) Act 1970 with Labour Department of Union of India, Dhanbad till date. The D.V.C. Establishment totally ignorant of the Government Notification dt. 3.7.1998 is exploiting the Forest Labourers even in other projects of D.V.C. at Durgapur, Panchat, Hazaribagh, Chandrapura, Bokaro Thermal. In spite of the permanent nature of job in sufficient assessed by the L.E.O.(C),Chirkunda in his inspection, and despite the instruction of Labour Ministry for proper and adequate payment of wages as per the Minimum Wages Act and other amenities /facilities including P.F.;the Management is neither complying nor regularizing the Forest Labourers who have covered 240 days attendance on their work in a year for more than 12 years under the directions and project of the D.V.C.In similar industrial dispute Ref.No. 5/1991, the Labour Court, Bokaro, has awarded for absorption of a group of 81 workmen being entitled to the wages and other benefits par with regular Mazdoor. So the workmen are entitled to regularization in the services of the D.V.C.

3. The sponsoring Union in its rejoinder of their workmen has categorically denied the allegation of the mamagnemt, and started that all the Forestry workers have been regularly doing their job in identified work since long period as contract labour and that the petitioners are entitled for same wage like Forestry workmen of BTPS & CTPS of D.V.C. Unit as well as for regularization.

4. Whereas the pleaded case of the O.P./Management D.V.C. with specific denials is that the workmen concerned are casual labour on contract labour basis, and payment is accordingly made to them. The nature of work is intermittent but not identified job. They are engaged on rotation basis in order to provide equal opportunity to all of them whenever required by the different office for casual work. They are not appointed against any. There is not any a required qualification or selection procedure for it. They are doing work as causal workers, but no attendance is required in official capacigty, so the management is unable to regularize them as regular employees of D.V.C.The Management has also declined before the Ministry of Labour to provide regular employment to aforesaid Shambhu Nath Mahato and 74 others, as neither the law of the Land nor the rules and regularities for D.V.C. permit to do so.

It is settled law that unless the appointment is in the terms of relevant rules and other proper competitions among qualified persons, the contractual engagement cannot confer any right upon such appointee; if the engagement or appointment on daily wages on casual basis, it comes to an end on the expiry of the term of his appointment; merely continuation of such temporary employee or casual wage workers for a time beyond the terms of engagement would not entitle to be absorbed in the regular service, if his original appointment was not made in accordance with the due process of selection as per the relevant rules.The plea of the petitioners for their regularization since working for 10-25 years and similarly situated colleagues regularized as per the office Order/ Circular issued by respective department cannot be acceptable, as it does not give rise any legal right to them to seek direction for it. Thus the claim of the petitioners for their regularization is not sustainable in the eye of the Law. Besides the documents filed by the petitioners are quite irrelevant to the case, as the list of documents is for 75 workmen but they are not on duty since long time so it needs verification. It is also submitted on behalf of the O.P./Management that the original petition/complaint of the workmen made through the Secretary of the Union concerned on 3.1.2000 is not available on the case record. Hence the petitioners are not entitled to any relief.

FINDING WITH REASONS

In the instant reference, I find WWI Ram Dayal Tewary,WW2 Kashi Nath Saw, (workman under Sl.No.5 & 52 respectively)WW3 Kumud Ranjan Bhattacharaya,the General Secretary for the Union concerned and MWI D.N.Prasad, the Joint Director (Pers.) of the D.V.C.,Hazaribagh, for the O.P./Management have been respectively examined for proper adjudication.

Mr. R.K. Bhattacharya, the Union Representative for the workmen emphatically submitted as per his written argument that despite specific instruction of the management, forestry workmen of CTPS &BTPS is getting Rs.10,000/- with others perks as contrasted with the present workmen concerned of DVC,Maithan Project each getting only about Rs.4277/- monthly (Photocopy of the monthly statement dt.12.12.12 for Nov.,2012 – Ext.W.1 with objection) which is highly discriminatory on the part of the Management, though the workmen have been working for 20-25 years; they have their legitimate claim. Similar is the statement of all the three witnesses for the instant DVC Mazdoo Sangh.According to WW3 Kumud Ranjan Bhattacharya, the Secretary of the Union, the photocopies of S.B.A/c Pass Books of aforesaid both workmen Kashi Nath Shaw and Ram Dayal Tiwari, of the Attendance Sheets for Feb,2013 (Twelve Sheets),and of the list of Forestry Workers with EPF deductions are the Extt.2,3 series & 4 (with objection) respectively. The photocopy of the monthly statement for Nov.,2012 (Ext.W.1) proves the payment of Rs.4,277- monthly to 73 workmen, but it displays the names of more three workmen Sri hari Ram,Raghu Nath Mahato and Manik Turi (workmen Sl. No. 6, 9, & 62 respectively) struck off in black sketch pen,signifying them not in existence. The photocopy of Attendance for Feb., 2013 (Ext.W.3) shows their Attendance on plain ruled paper only for 15 days in the said Feb. of the year. The photocopy of list of Forestry Workers with E.P.F. deductions (Ext.W.4 with objection) is only the list of 68 workmen without any reference of deductions. Flying photocopy of the Hon'ble Supreme Court's order dt. July 10, 2005 passed in Civil Appeal No. of 2005, DVC Staff Association. Bokaro Vs. D.V.C. & Ors, Learned Union Representative has submitted for regularization the workmen members of the petitioner Association, Bokaro, as directed to the Management, Bokaro.The stressful argument of the Leaned Union Representative for payment of wages to the workmen retrospectively as the employees of Chandrapura and Bokaro Forestry getting appears to be not only contradictory but also not plausible as the terms of the reference stands for adjudication.

Whereas Mr. B.K. Jha, Learned Advocate for the O.P./Management, has contended that all the workmen are not appointed against any vacancy; they as contract labourers perform the work related to the Forest and Gardening of the Project whenever required under the D.V.C,.which are of intermittent nature; and the payment to the Forest Labourer is done as per the instruction and the office Order of the Management; and since how long they are working is beyond the knowledge of MWI D.N.Prasad,posted as the Joint Director (Pers), D.V.C., Hazaribagh since June 24,2013. Mr.Jha,Learned Advocate for the O.P./Management has submitted that merely because a temporary employee or a casual wage workers as continued for a time beyond the terms if his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuatuance, if the original appointment was not made by following due process of selection as envisaged by the relevant as held by the Hon'ble Apex Curt in the case of /state of Karnataka Vs.Uma Devi 2006(4).Further, citing the ruling of the Hon'ble Jharkhand High Court reported in the JLJR 2012,Ramesh Mahato Vs. State of Jharkhand ,it has been held as submitted by Mr.Mishra,that petitioners are working for 10-20-25 years, some of similarly situated colleagues regularized under the Office Order/circular issued by respective department, therefore plea taken for issuance of mandamus in their favour, right of regularization can be created by the state by enacting law or statutory scheme similarly situated employees were regularized pursuant to such circular shall not give rise to any legal right to the petitioners to seek direction also for regularization; in such circumstances no direction can be issued in favour of the petitioners(at page 120).Mr. Jha appears to have underlined that in the instant reference the three workmen witnesses deposed for the wages like CTPS & BTPS forestry workmen beyond the terms of the reference and relinquished their claim for regularization which is not tenable.

On perusal and consideration of the materials, oral and documentary, of both the parties, after hearing the arguments as advanced on their behalf, I find the indisputable fact that the alleged workmen were not appointed by the DVC,rather they were orally engaged by the Forest Ranger for the job of maintaining the garden of the D.V.C. for 20-25 years. But the Union has no proof of any workman's continuous service as a forestry worker for 240 days during a period of twelve calendar months preceding Aug., 29, 2000, the date with the reference to which calculation to be made for his actual working under the employer as required under Sec.25 B (2) (a) (ii) of the Industrial Disputes Act 1947.The argument of Mr.B.K.Jha, Ld.Advocate for the OP/Management appears to be persuasive and plausible.

Under these circumstances, it is, in the terms of the reference, responded,and accordingly thereby

ORDERED

That the Award be and the same is passed that the refusal of the Management of M/s D.V.C. to provide regular employment to S/Shri Shambhu Nath Mahato & 74 others (excluding six dead ones under Sl.No.6,9,22,58,62 and 70 of the list enclosed) in regular services of D.V.C. is quite justified. The rest workmen concerned are not entitled to any relief.

KISHORI RAM, Presiding Officer

LIST OF THE WORKMEN WORKING IN THE FORESTRY DIVISION IN D.V.C. AT MAITHON, DISTRICT-DHANBAD

Sl. No.	Name	Father's/Husband, s Name & address	Year since working	Remarks
1	2	3	4	5
1	Shambhu Nath Mahato	Lakhi Ram Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1976	
2	Nibaran Prasad Mahato	Lakhi Ram Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1976	
3	Sagar Mahato	Lakhi Bulai Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1993	
4	Niranjan Mahato	Late Balai Mahto, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1983	
5	Ramdayal Tiwari	Late Lakhi Kant Tiwari, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1983	
6	Srihari Rai	Late Debu Roy, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1983	
7	Satya Manjhi	Pura Manjhi, Village- Mangudih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1982	
8	Bhim Mahato	Ashutosh Mahato, Village- Dumujore, PO: Benagoria, P.S.Nirsa, Distt:Dhanbad	1983	
9	Raghu Mahato	Pado Mahato, Village Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1984	
10	Kamal Mahato	Pado Mahato, Village Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
11	Smt.Chita	Santosh Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
12	Rabi Rai	Late Mangal Rai, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1984	
13	Nisapatti Manjhi	Late Sumoi Manjhi, Village: Madandih, PO:Barbubduita, P.S.Nirsa, District.Dhanbad	1985	
14	Manik Mahato	Late Trilochan Mahato, Village- Sitalpur, PO:Dishergarh, P.S.Kulti, Distt:Burdwan (W.B.)	1984	
15	Ramlal Manjhi	Vllage –Bili, PO:Kalibathan, PS.Nirsa, Distt:Dhanbad	1984	
16	Badal Mahato	Late Haradhan Mahato, Village- Amlachatar, Jamtara, P.O.Asan Chuan, P.S.Jamtara, District:Dumka (Jharkhand)	1986	
17	V.K.Bhattcharjee	Brajan Bhattacharjee, Village-Maithaon, PO:Maithon, PS. Maithan (Chirkunda), District:Dhanbad, Jharkhand	1984	
18	Nandlal Mahato	Late Fagu Mahato, Village- Laghata, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1984	
19	Nimal Mahato	Lakhi Bulai Mahato, Village- Madandih, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1986	
20	Sri Amolya Lohar	Late Khokhu Lohar, Village- Magurdih, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1984	
21	Sri Mena Manjhi	Late Shisu Manjhi, Village- Madandih, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1984	
22	Basu Mahato	Late Dhuma Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
23	Kalo Pado Mahato	Late Jitu Mahato, Village- Madandih, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1984	
24	Haradhan Mahato	Late Dhoma Mahato, Village- Madandih, PO: Barbindiya, P.S. Nirsa, Distt:Dhanbad	1984	

1	2	3	4	5
25	Gopal Mahato	Beni Mahato, Village- Laghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1984	
26	Sunil Mandal	Sri Rishi Mandal, Village- Bootbera, P.O.Chainpur, P.S.Narayanpur, Distt:Dumka (Jharkhand)	1984	
27	Debanand Mahato	Etwari Mahato, Village Karmatand P.O., Dist: Giridih	1985	
28	Subash Mahto	Radhanath Mahato, Village Patlibari, P.O. Benagoria, P.S.Chirkunda, Distt:Dhanbad	1984	
29	Parimal Chakraborty	Bhibhuti Bhushan Chakraborty, Village: Upchiriya, Post-Poddardih, P.S.Nirsa, Distt:Dhanbad	1984	
30	Anil Rajhans	Late Manohar Rajhans, Village C.P.Nagar, P.O.Maithon, P.S.Maithon(Chirkunda), Distt: Dhanbad	1984	
31	Sri Barun Singh	Late Hariram Singh, Village Amla Chatter, P.O.Asan chuan, P.S.Jamtara, Distt: Dumka	1984	
32	Gamal Manjhi	Manjur Manjhi, Village- MangurdihPO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
33	Raju Lohar	Late Latan Lohar, Village - Purni, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
34	Lakhinder Mahto	Munda Mahato.Village-Lawghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
35	Gour Rawani	Shambhu Rewani , Village- Lawghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
36	Bhola Singh	Jitu Singh, Village- Beliad, P.O. Maithon, P.S. Maithon (Chirkunda), Distt:Dhanbad.	1984	
37	Ramchand Manjhi	Late Dugru Manjhi, Village Paludih PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
38	Raj Kumar	Late Janki Mahato, Village – Barka Kala, P.O. – District- Hazribagh	1985	
39	Ishwar Prasad Mehta	Bulaki Mehta, Village – Barka Kala P.O.- District- Hazaribagh	1986	
40	Gour Mahato	Sari Bhola Nath Mahato, Village- Karmatand , P.O.:-Kunjjora, District: Deogarh	1986	
41	S.K.Choubey	P.R.Choubey, Village Maithon, P.O.Maithon, P.S. Maithon (Chirkunda), Disgtt:Dhanbad	1986	
42	Chaitan Rai	Balaram Rai, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
43	Aso Mahato	Late R.Mahato, Village- Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
44	Sunil Turi	Nakul Turi, Village-Laghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
45	Suresh Mahato	Ashutosh Mahato, Village- Dumujor, PO: Benagoria, P.S.Nirsa, Distt:Dhanbad	1986	
46	Shankar Mahato	Mahindi Mahato, Village-Laghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1985	
47	Jitaran Manjhi	Late Bodi Marandi, Village- Laghata, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
48	Mahadev Rai	Late Atwari Rai, Village-Madandih, PO: Barbindiya, P.S.Nirsa, Distt:Dhanbad	1986	
49	Kalpa Mahato	Dukhu Mahato, Village:Laghata, PO: Barbindiya, P.S.Nirsa, District:Dhanbad	1985	
50	Bharat Mahato	Hapan Mahato, Village-Kalipahari, P.O.-Maithon, P.S.Maithon (Chirkunda), Distt:Dhanbad	1986	
51	Shankar Shaw	Babu Lal Shaw, Village –Kalipahari, P.O.Maithon, P.S. Maithon (Chirkunda), Distt:Dhanbad	1987	

1	2	3	4	5
52	Kashinath Shaw	Babu Lal Shaw, Village –Kalipahari, P.O.Maithon, P.S. Maithon (Chirkunda), Distt:Dhanbad	1987	
53	Bablu Bawari	Late Dhareni Bawari, Village Amkura, P.O.Maithon, P.S. Maithon (Chirkunda), Distt:Dhanbad	1987	
54	Palan Bawari	Buku Bawri Village –Amkura, P.O.Maithon, P.S. Maithon, Distt:Dhanbad	1987	
55	Dhiru Bauri	Habu Bauri Village –Amkura, P.O.Maithon, P.S. Maithon, Distt:Dhanbad	1987	
56	Dulal Mhato	Late Hrishikesh Mahato, Village –Kalipahari, P.O.Maithon, P.S. Maithon (Chirkunda), Distt:Dhanbad	1987	
57	Uttam Shaw	P.C.Shaw, Village –Kalipahari, P.O.Maithon, P.S. Maithon, Distt:Dhanbad	1987	
58	Butu Kishku	Late Sobre Kisku, Village – Porolia, P.O.Maithon, P.S. Maithon , Distt:Dhanbad	1987	
59	Bhailal Baski	Late Machru Baski, Village –Gogna, P.O.Maithon, P.S. Maithon, Distt:Dhanbad	1987	
60	Sarju Marandi	Sukul Marandi, Village : Porolia, P.O.Maithon, P.S. Maithon , Distt:Dhanbad	1987	
61	Mongal Murmu	Late Sidam Murmu, village –New Nagar, Maithon, P.O. Maithon, P.S. Maithon , Distt:Dhanbad	1987	
62	Manik Turi	Sukdev Turi, Village -Kalipahari , Village –Kalipahari, P.O.Maithon, P.S. Maithon , Distt:Dhanbad	1987	
63	Madhu Mandal	D.N.Mandal, village -Kalipahari, P.O.Maithon, P.S. Maithon , Distt:Dhanbad	1987	
64	Ajit Turi	Ram Nath Turi, Village –Kalipahari, P.O.Maithon, P.S. Maithon , Distt:Dhanbad	1987	
65	Ganesh Tudu	Village –Gogna, P.O. Maithon, P.S. Maithon, Distt:Dhanbad	1987	
66	Jitan Mahato	Late Ram Lal Mahato, Village –Kalipahari, P.O. Maithon, P.S. Maithon, Distt : Dhanbad	1987	
67	Baleshwar Mahato	Atwari Mahato, Village : Karmatand, PO-Nil, Distt:Giridih	1986	
68	Narayan Das	Late Sanatan Das, Village- Amdiha, Bnkura, (W.B.)	1986	
69	Mihir Mondal	Sudhir Mandal Village –Kapasar, P.O.Govindpur, Dhanbad	1987	
70	Ajit Bauri	Village: Gogna, PO;Maithon, P.S.Maithon, Dist:Dhanbad	1987	
71	Umesh Rewani	Ananda Rawani, Village;Rampur, P.O.Nirsa, P.S. Nirsha, District:Dhanbad	1986	
72	Smt Kanak Dasi	Late Binod Das, Vill : Benagoria, P.O.:Benagoria, P.S.Nirsa, Dist:Dhanbad	1986	
73	Smt.Bimla Mahto	Late Vishwa Nath Mahato, Village:Tarapur, PO: Borra, P.S.- Raghunthpur, Distt:Purulia (W.B.)	1998	Her husband was working in the same since 1994. After death Smt. Bimla Mahato resumed duty in place of her husband.
74	Suleman Ansari	Vill: Bathanbari, PO & Dist:Burdwan (W.B.)	19	
75	Kangresh Hasda	Parmeshwar Hasda, Vill:Gogna, PO:Maithon, P.S. –Maithon, Dist:Dhanbad	1987	

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1365.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा जनरल मैनेजर, इंडो जर्मन टूल रूम, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या CGITA/162/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/69/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGITA 162/2012) of the Central Government Industrial Tribunal/ Labour Court, Ahmedabad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Indo German Tool Room, Ahmedabad and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-42011/69/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 13th February,2014

Reference (CGITA) No. 162/2012

Adjudication Order No. L-42011/69/2012-IR(DU)

The General Manager,
Indo German Tool Room
Government of India Society,
Under Ministry of Micro,
Small & Medium Enterprise,
Phase-IV, Plot No. 5003, GIDC, Vatva,
Ahmedabad(Gujarat) ..... (1st Party)

And

Their workman
Through the General Secretary/President
Indo German Tool Room,
Block No. 567/3546, Gujarat Housing Board,
New Bapunagar,
Ahmedabad(Gujarat) .....(2nd Party)

For the First Party : Shri Nandlal Mishra (Management representative)

For the Second Party : Shri Raghuvir S. Sisodia, President of the Union & National Organising Secretary, B.R.M.S

AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-42011/69/2012-IR (DU) dated 23.11.2012 referred the dispute under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication to this Tribunal (C.G.I.T.-cum-Labour Court, Ahmedabad) on the terms of reference specified in the Schedule:

SCHEDULE

"Whether the action of the management of General Manager, Indo German Tool Room, Ahmedabad in appointing S/Shri Hasmukh Solanki , Kiran G. Chavda, Dilip Asoda, Ramanlal Kharadi, Prabhat Damodar, S.T. Bhagora and Dinesh K. Ninama on the lower post than the one applied and interviewed for and demand of the Union for all the benefits from the date of appointment is justified? If not, to what relief the workmen are entitled for?"

2. The Case of the Union (2nd party) as per statement of claim (Ext.7) is that the 1st party employer in the year 1993 has given an advertisement inviting applications for the post of Technical Manpower. The workman applied and cleared the interview and practical test, but they were not given the appointments as per advertisement, similarly in the year 1994, the 1st party gave an advertisement inviting the applications for the post of semi-skilled workers and the 1st party again issued advertisement in daily newspaper in the year 1995 inviting applications for the post of semi-skilled worker in the pay scale of Rs. 3050/3950. The 2nd party/workman appeared and cleared the examination but they were not given appointment order on the post of semi-skilled worker rather they were issued appointment orders as Helper instead of semi-skilled workman and have been paid the pay- scale of helper lower than the pay scale of semi-skilled worker. The case of the 2nd party is that the workman involved in this case have performed their duties as semi-skilled worker during the period 24/08/1994 to 24/08/2000 and so those workman are entitled for the difference of wages of semi-skilled worker. The workman involved have also performed their duties as skilled workers during the period 25.08.2000 till 25.08.2006 but were paid the wages of semi-skilled workers and so they are entitled for difference of wages of skilled worker. Further the workman involved in this case have performed the duties of High skilled worker for the period of 26.08.2006 till the date of reference on completion

of their qualifying service according to the rules. Further case is that in the year 2008 the 1st party employee granted promotion to the post of skilled workmen-II they were legally entitled for wages for skilled workman-1 and thereafter the workman involved are entitled to promotion as per policy and service Rules from time to time. The workman involved are standard X passed + I.T.I. and having experience. The 1st party employer had continuously violated the recruitment Rules from 1994 to 1996. There were clear cut vacancies and the posts were vacant but inspite of workmen clearing the test for the post of semi-skilled worker they were given the post of Helper by the selection committee. On these scores, prayer is made to direct the 1st party employer to revert the appointment from Helper to semi-skilled worker and for payment of difference of wages and also two promotions based on the scale of semi-skilled work (SSW) to the workman Hasmukh Solanki, Kiran G. Chavda, Dilip Asoda,Raman Lal Kharadi, , Prabhat Damor, S.T. Bhagora and Dinesh K. Ninama and any other relief to which they are found entitled.

3. As against this the contention of the 1st party in its W.S. (Ext.8) is that the demand raised by the 2nd party is barred by delay and latches reference is not maintainable and the 2nd party has no cause of action and that the averment in para 1 to 8 are denied. It is the case of the 1st party it is an autonomous body under Ministry of MSME (formerly Ministry of small scale Industries) and having its own recruitment rules approved by its governing counsels. There is selection committee constituted for all the posts to conduct interview and select the right candidates for the respective post. More qualification and experience is not the criteria for getting selected but it is the selection committee's discretion to ascertain the suitability of the candidate for the post. The workman involved namely H.V. Solanki, K.G. Chavda, R.P. Kharadi, P.J. Damor, ad D.N. Asoda applied for the post of semi-skilled worker and they were interviewed for the same position by the selection committee. The selection committee is empowered to set their own criteria for evaluation of candidates and selection of best candidates for appointment for working in the highly complex in nature working atmosphere. Further case is that out of employees in the matter who were aggrieved Sh. S.T. Bhagora and D.K. Ninama both applied for the post of helper and so the claim of these two are false and fit to be rejected. The remaining 5 employees who applied for the position of semi-skilled worker against different advertisements in the grade 950-20-1150-E.B.25-1400 and re designated as Technical Gr.III. They were interviewed by the selection committee but they were found not suitable for the position of SSW and as per guideline if a candidate was not found suitable for the position interviewed, he may be offered the lower position. Accordingly these five employees were offered next lower position of Helper in writing and they accepted without any objection and joined and worked almost five years without raising any grievance. They for the first time raised grievance during the year 2000-01 and approached the Labour Commissioner (Central) and for the interest of cordial relations settlement was made the names of seven employees were considered for interview for the position of semi-skilled worker and without going into merit of the case as per settlement has selected all the seven employee workmen for the position semi-skilled worker. Again in the year 2008 these seven employees' workmen approached the labour office of the same grievances stating that they were losing seniority for their next promotion. Again for he reasons of cordial relations and to resolve the matter sympathetically. Settlement was arrived at to promote them giving them the benefit in terms of exemption for the number of years of experience. Accordingly all of them were promoted and settlement was honoured in full and final. But after obtaining two financial benefits as party of full and final settlement of same case at same office and taking all benefits they have once again raised grievance through labour office but the demand was not justified the 1st party management were unable to accept the demand. Further reply of S/c para-wise is that para -1 of S/c it is the sole prerogative of selection committee to decide the best candidate for appointment considering the suitability and that mere qualifications and number of years experiences as per the advertisement and appearing for the interview and practical test is not the criteria for selection and appointment. Para-2 of S/c is incorrect and misleading as per details given in the table. Para-3 of S/c as per the above advertisement dated 30.08.2000 has not offered any body for the post of helper. Para 4 of the S/c is totally denied that they have performed the duties of semi-skilled worker from 24.08.1994 to 24.08.2000 and duties of skilled worker from 25.08.2000 to 25.08.2006 and these are misleading. For the carrier development IGTR management has given them training in various software and given them on job training which they have misunderstood that they were performing duties of semi-skilled worker and skilled worker. Normally the seniors do the complex programming and setting and the juniors mere monitor the automatic working of the machine it cannot be taken as working at higher grade. The averment of para 5,6 and 7 are denied totally para 8 of S/c has been denied that these seven employees worked on higher positions. On these scores payer is to dismiss the reference since the 2nd party/are not entitled to any relief since they have already been given two up-gradations as per agreement with the conciliation officer-cum-ALC (Central).

4. In view of the rival contention of the parties the following issues are taken up for consideration and adjudication:

ISSUES

(i) Is the reference maintainable?

(ii) Has the Union/2nd party valid cause of action?

(iii) Whether the workman-Shri Hasmukh Solanki, Kiran G. Chavada , Dilip Asoda , Ramanlal Kharadi, Prabhat Damor, S.T. Bhagora and Dinesh K. Ninama are entitled for their respective appointment from the dates in the position of semi-skilled worker, for which they had applied and interviewed for?

(iv) Whether the action of the management of general manager Indo German Tool Room, Ahmedabad in appointing them on the lower post of Helper than the one applied and interviewed for is justified?

(v) Whether the demand of Union (2nd party) for giving all the benefits to them (seven Workmen) from the date of appointment is justified?

(vi) Whether the Union/2nd party/workman are entitled to the relief as claimed?

FINDINGS

5. **ISSUE NOs. iii & iv:-** The 1st party in its written statement at page 5 has shown a table with Sr. No. –Name of Employee –First post applied for –Interviewed for/Date of joining-second appointment & date of joining-promotion details & date of promotion. At Sl. Nos. 6 and 7 there is name of D.K. Ninama and T.S. Bhagora and respectively who had applied for first post of Helper and interviewed for Helper and appointed for the position of Helper on 08.02.1997 and 10.02.1997 respectively. Both of them got second appointment in SSW and joined in the position on 01.05.2002 and 02.05.2002 respectively. Both of them again got promotion in Technician Gr. II on 01.01.2011 so these two out of seven workmen has had no grievances against the management of the 1st party. Annexure I,II, & III clearly support the case/stand of the 1st party which are attached with the W.S. (Ext.8). So, T.S. Bhagora and D.K. Ninama are out of the court in this case.

6. It is admitted position as per Para-1 of the W.S. that the remaining five persons H.V. Solanki, K.G. Chavda, R.P. Kharadi, D.N. Asoda and P.J. Damor had applied for the first post of SSW (semi-skilled worker) but were appointed for the position of Helper as per recommendation of selection committee. Ext.9/1, 9/2 and 9/3 are documents concerning K.G. Chavada that he was called for interview of SSW on 22.06.1994 in view of his application for the as per advertisement of the year 1993 (Ext.9/2). However he was offered memorandum of appointment dated 19.07.1994 for the post of Helper dated 19.07.1994 and he accepted the post of Helper without raising objection at that time and had joined on 24.08.1994. Ext. 9/4 is memorandum of appointment on the post of Helper dated 19.07.1994 of H.V. Solanki against the call letter of interview for SSW. (Ext.9/5) he was also appointed for the post of Helper on dated 19.07.1994 and without raising objection grievances at that time had joined on 24.08.1994 as Helper as per chart mentioned in W.S. The copy of interview call letter of R.P. Kharadi, D.N. Asoda and P.J. Damor for the post of SSW and their appointment letter for the post of Helper have not been filed on behalf of the 2nd party. But their position are also obvious as that of H.V. Solanki and K.G. Chavda also find support from the chart of the 1st party in the W.S. that they were appointed as Helper and joined on 03.03.1996, 24.08.1995 and 02.03.1996 respectively and they did not raise any objection and accepted the post of helper and joined like H.V. Solanki and K.G. Chavda on the post of Helper. Ext. 9/6 and 9/7 are copy of advertisement dated 30.08.2000 and 20.12.1995 respectively published in daily newspaper.

7. Ex. 10 is affidavited exam in chief of Hasmukh V. Solanki Ext. 11 of Dilip N. Asoda. Ext. 12 is of Ramanlal P. Kharadi, Ext.13 is of Prabhat J. Damor, and Ext.14 is of Kiran G. Chavda in support of case as per statement of claim. Their affidavits are Verbatim reproductions that they were called for interview of semi-skilled worker but were appointed for the post of Helper. Their statement at para 3 of affidavits are that the management made for the post of Helper is belonging to SC/ST category only but from Ext. 9/2,9/6 and 9/7 all three advertisement of the year 1993,1995 and 2000 go to show in the year 1993 8 post of Helper were advertised out of which 1 post for SC and 2 post for ST and 5 posts were unreserved. As per affidavit (Ext.10 and Ext.14) H.V. Solanki and K.G. Chavda were belonging to SC–ST category and they were appointed as Helper though applied for an interview for the post of SSW for the vacancy of SC-ST category. Both of them did not make protest or raised grievance before joining on 24.08.1994. Remaining three D.N. Asoda, R.P. Kharadi, and P.J. Damor also belonging to SC/ST category as per their affidavits Ext.11.12 and 13 at para 2 had been appointed to the post of Helper without any grievance on 03.03.1996, 24.08.1995 and 02.03.1996 respectively. In the advertisement of Gujarat Samachar dated 20.12.1995 there were no post of Helper advertised and only 2 post of SSW advertised reserved for ST candidate. In the pleading (Statement of claim) the 2nd party Union have made self-acclaimed statement that the workman have applied and cleared the interview and practical test of SSW but they were not given the appointment as per advertisement. It is well known that one cannot claim himself to be so competent to judge himself that he cleared all examination and test for the post applied for and interviewed for. Rather all depends upon the assessment of candidate's ability by selection committee as constituted for the purpose as per rules who found them not suitable for the post of semi-skilled worker. There is clear stand of the 1st party that the tool room was in inception stage and most of the posts were vacant and there was a guideline that if a candidate was not found suitable for the post interviewed, he may be offered lower post if the candidate had potential. It is quite obvious that

since these five candidates were not found suitable for the post interviewed so they were offered next lower post of Helper in writing and they all accepted that post of Helper and joined and worked for 5 years without raising any grievance.

8. On the other hand the 1st party witness Mr. V.G. Lal administrative officer, I, G.T.R., Ahmedabad deposed in his affidavit (Ext.15 that it is incorrect that as per advertisements released at various time were for different posts including Helper and it is incorrect to say that it was only for the post of SSW. There was no element of bias as stated in affidavit of 5 candidates (Ext.10 to 14) because some senior officer of the organisation including German advisor and SC/ST representative after considering the recruitment Rules, those 5 candidates were appointed at 5 lower posts as the committee could have considered that they need more experience to be appointed as SSW. Further evidence is that in some case Helper operated machines to get on the job training along with other seniors. In such case normally the difficult part of the duty i.e. setting the machine and programming is carried out by seniors and juniors normally monitor the CNC machine which perform automatically. Further evidence of the 1st party witness at Para 3 the aggrieved workman (employees) were given two promotions to them in the year 2001 & 2002 and again in 2008. These promotions were given to them as solution to their current grievance which was arrived at as settlement with ALC (Central) Ahmedabad and therefore the grievance was resolved in 2001 and 2002 when they were taken as Technician Grade III (earlier SSW). So their further demand for considering promotion on promotion i.e. when they were promoted as Technician Grade III their demand to consider it as Technician grade II and so on shall not be considered. Such evidence of the witness of the 1st party it is conformity with the pleading (W.S.) page 4 & 5 including the chart that reveals that disputant workman H.V. Solanki who joined as Helper on 24.08.1994 was promoted and joined as Helper on 24.08.1994 was promoted and joined as SSW on 26.05.2001 and promoted as Technician Gr.II on 01.09.2008, Mr. K.G. Chavda who joined as Helper on 24.08.1994 was promoted and joined as SSW on 01.05.2001 and promoted to Technician Gr, II on 01.09.2008 , Mr. R.P. Khardi joined as Helper on 03.03.1996 was promoted and joined as SSW on 26.04.2001 and promoted as Technician Gr. II on 01.09.2008, Mr. D.N. Asoda joined as Helper on 24.08.1995 was promoted and joined as SSW on 01.05.2002 and promoted as Technician Gr. II on 01.09.2008, Mr. P.J. Damor joined as Helper on 02.03.1996 was promoted and joined as Helper on 02.03.1996 was promoted and joined as SSW on 01.05.2002 and was given further promotion in Technician Gr.II on 01.01.2011, Mr. D.K. Ninama joined as Helper on 08.02.1997 was promoted and joined as SSW on 01.05.2002 and again promoted to Technician Gt. II on 01.01.2011 and Mr. S.T. Bhagora joined as Helper on 10.02.1997 was promoted and joined as SSW on 02.05.2002 and was further promoted as Technician Gr.II on 01.01.2011 as per two settlement with the management before ALC(central) Ahmedabad. So it is crystal clear that after obtaining two full and final settlement of the same case at same office and taking all benefits, the raising of dispute again by the workman through the union is not at all justified. More so, the factum of two settlements have been purposely concealed by the 2nd party in its pleading (statement of claim) as well as in affidavits in chief Exts.10 to 14.

9. As per discussion and consideration made above I find that Mr. Hasmukh Solanki, Kiran G. Chavda, DilipAsoda, Ramanlal Kharadi and Prabhat Damor are not entitled for their respective appointment from the date's in the position (post) of SSW (semi-skilled Worker) for which they had applied and interviewed for. Mr. S.T. Bhagora and Dinesh K. Ninanama had applied for and interviewed the post of Helper and so these two are out of courts in this case. As per two settlements with the management these two have been promoted to SSW and again promoted to technician Gr. II. I also find that the action of the management of general manager Indo German –Tool Room, Ahmedabad is justified in appointing Mr. Hasmukh Solanki, Kiran G. Chavda, Dilip Asoda, Ramanlal Kharadi and Prabhat Damor on the lower post of Helper than the one applied and interviewed for, Thus Issue No. III is answered in negative and Issue No IV is answered in affirmative.

10. **ISSUE NO. V:-** In view of the findings to issue No. iii & iv in the foregoing paras, I further find and hold that the demand of Union (2nd party) for giving all the benefits to the five workmen Shri Hasmukh Solanki, Kiran G. Chavda, Dilip Asoda, Ramanlal Kharadi and Prabhat Damor from the date of appointment is not at all justified. Other two workmen Shri S.T. Bhagora and Dinesh K. Ninama are from the beginning out of the court in this case. So the demand of the Union for them is equally unjustified. This issue is accordingly decided against the 2nd party.

11. **ISSUE NOS. I, II & VI:** In view of the findings to issue No. III, IV and V in the foregoings, I am of the considered opinion and so find and hold that the reference is not maintainable, the Union/2nd party has no valid cause of action and the union/2nd party/workman are not entitled to any relief in this case.

The reference is dismissed. However, no order of cost.

This is my award.

Let copy of award be sent to the appropriate Government for publication u/s 17 of the I.D. Act, 1947.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा मैनेजमेंट ऑफ मिलिट्री फार्म, बिन्नागुड़ी कैंटोनमेंट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या CGIT- 22 of 2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1366.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT-22 of 2012) of the Central Government Industrial Tribunal/ Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Management of Military Farm, Binnaguri Cantonment and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-22 of 2012

(Under Section 2A(2) of the I.D. Act, 1947)

Parties : Shri Umesh Darjee,
Vill. Railway Coloney Binnaguri,
P.O. Binnaguri, Dist. Jalpaiguri,
Pin - 735203 .... Applicant

- Vs –

Management of Military Farm,
Binnaguri Cantonment,
Dist. Jalpaiguri, Pin – 735203. .... Opp. Party

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None.

On behalf of the Workmen : Mr. Gautam Debnath, Ld. Advocate.

State : West Bengal.

Dated : 28th March, 2014.

AWARD

This is an application filed by one Shri Umesh Darjee under Section 2A(2) of the Industrial Disputes Act, 1947 against the management of Military Farm challenging his termination of service by the management as illegal, invalid and void ab-initio and praying for his reinstatement in service with back wages.

2. The Applicant is found absent when the matter is taken up today. It appears from the record that on the previous two consecutive dates of hearing, adjournment was allowed on the prayer made on behalf of the Applicant. Today the Ld. Counsel for the Applicant, Mr. Saibal Mukherjee has submitted that he has no instruction from his client and as such he is not in a position to conduct this case on behalf of the Applicant. Above conduct of the Applicant goes to show that he is not at all interested to proceed with the case further. Perhaps the dispute between the parties does not exist at present.

In view of the above, instant application is dismissed being not moved.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 28th March, 2014.

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा चीफ जनरल मैनेजर टेलीकॉम बीएसएनएल, मिर्ज़ापुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 73/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/09/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 73/2004) of the Central Government Industrial Tribunal/Labour Court, Lucknow, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief General Manager, Telecom, BSNL, Mizapur and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-40012/09/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 73/2004

Ref. No. L-40012/9/2004-IR(DU) dated 20.07.2004

BETWEEN

Sh. Ram Raj Pandey
S/o Sh. Prem Narayan Pandey
Village & PO Bangah
Distt. Varanasi (U.P.)

AND

The Chief General Manager
Telecom, BSNL
Mirzapur (UP)

AWARD

1. By order No. L-40012/9/2004-IR(DU) dated 20.07.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Ram Raj Pandey, S/o Sh. Prem Narayan Pandey, Village & PO Bangah, Distt. Varanasi (U.P.) and the Chief General Manager, Telecom, BSNL, Mirzapur (UP) for adjudication.

2. The reference under adjudication is:

> "WHETHER THE EMPLOYEE-EMPLOYER RELATIONSHIP IS ESTABLISHED BETWEEN BSNL AND SH. RAM RAJ PANDEY? IF YES, WHETHER THE ACTION OF THE MANAGEMENT OF BSNL, MIRZAPUR IN TERMINATING THE SERVICES OF SH. RAM RAJ PANDEY S/O SH. PREM NARAIN PANDEY W.E.F. 1/11/2002 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF HE IS ENTITLED FOR?"

3. The case of the workman, Ram Raj Pandey, in brief, is that he was employed at the Telephone Exchange, Adalpura, Distt. Mirzapur on the post of security guard w.e.f. 01.08.1998 without any appointment letter and worked as such till 01.11.2002 when his services has been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947 in spite of the fact that he worked for more than 240 days in each calendar year. It has been alleged by the workman that the management employed some other new persons in violation to the provisions contained in the Act. Accordingly, the workman has prayed that his termination order be set aside and he be reinstated with consequential benefits including back wages.

4. The opposite party has filed its written statement, denying the claim of the workman; wherein it has submitted that the workman was never engaged by it, as such, there arises no question of termination/retrenchment or violation of any of the provisions of I.D. Act. Moreover, it has been submitted that for supply of security guards an agreement has been entered into with some security agencies. It has been further submitted by the management that the workman never received any payment towards salary from the department directly; rather the management, as per terms of the contract, had always paid for the watch and ward services rendered by the security agency and at no point of time any payment was made to the workman by the management in lieu of his any services. The management has specifically submitted that the workman have been deployed by some security agency and on expiry of agreement, the services of the applicant were terminated automatically under the terms and condition of the agreement. Accordingly, the management has prayed that the claim of the workman be rejected without any relief to him.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim.

6. The parties filed photocopies of certain documents in support of their respective claim. The workman has examined itself in support of his averments made in the statement of claim; whereas the management has not produced any witness for examination in spite of several opportunity being given, which led to the presumption that the management does not want to produce any evidence vide order dated 05.03.2009; and the case was fixed for argument. The management moved recall application, which too was rejected due to non-prosecution. Accordingly, the date was fixed for arguments; and when the parties did not turn up for arguments, the case was reserved for award keeping in view long pendency of the case.

7. I have perused entire evidence on record.

8. The workman has come up with the case that he had been employed by the opposite party in one of its Telephone Exchange since 01.08.1998 and he worked continuously up to 01.11.2002 for more than 240 days in each calendar year; but his services have been terminated without following the mandatory provisions of Section 25-F of the Act i.e. giving any notice or notice pay in lieu thereof or any retrenchment compensation. It has also alleged that the management also violated provisions of Section 25-G by employing other persons in his place after his termination.

9. Per contra, the management's case that the workman had never been an employee of the BSNL; rather he was supplied by one of the agencies, supplying security guard to it. It is very clear case of the management that the services of the workman got terminated automatically on expiry of contract between the management and the contracting agency; therefore, there is no substance in the claim of the workman as there was no relationship of employer and employee between the management and the workman at any point of time.

10. The workman in his statement of claim has pleaded that he has been employed as Security Guard w.e.f. 01.08.1998 and his services have been terminated vide letter dated 01.11.2002 by which his services were terminated. He has filed the photocopy of the letter dated 01.11.2002, terminating his services. The management has denied that letter dated 01.11.2002; but the workman failed to file the original one, which he is presumed to have. On the contrary, in this regard he has stated that its original is with the management. Also, the workman in its evidence has stated that he worked on the post of Chawkidar and Generator operator; but no appointment order was given to him. It was also stated that his name was neither called from any Employment Exchange nor he was regularly appointed. It was further stated that no advertisement was publish nor he went through any examination or interview. The workman has filed the photocopy of certain documents paper No. 32/2 to 32/122 with list C-32 in support of his working details.

11. The schedule of reference, referred to this Tribunal is firstly regarding existence of employee and employer relationship between the workman and the management. The case of the workman is that he has been employed with the management of BSNL without any appointment letter on the post of Security Guard; and he worked accordingly, for four years and his services have been terminated by the management of BSNL in utter violation to the provisions of the I.D. Act. In rebuttal, the management of BSNL has denied the employment/ engagement of the workman at any point of time by it; rather it has been submitted that his services have been availed through some agency. The burden lies on the workman to prove that he was actually employed with the management of BSNL. In the event of denial of the management of BSNL regarding his employment, it was incumbent upon the workman to lead evidence to the effect that he was actually employed by the opposite party. As per his own statement, he was employed as Security Guard; but was not given any appointment letter. He has also stated that neither there was any advertisement regarding vacancy nor his name was sent by the Employment Exchange, nor he undergone any prescribed procedure for the appointment. On the contrary the management has pleaded that the workman's services were hired through some agency, which undergone a contract with the management for labour supply. It has also filed a copy of contract with the M/s Lion Security Services, Varanasi. There was no denial from the workman of any such contract between the management of the BSNL and M/s Lion Security Services, Varanasi. Admittedly, no appointment letter or pay slip, wage register, muster roll or attendance register etc. was filed before this Tribunal by the workman to prove this fact that there was any relationship of employee and employer between the workman and the management of BSNL. Hence, the workman has failed to substantiate its pleadings that he was employed by the BSNL on the post of Security Guard and there is no evidence to record this finding that there was any relationship of employee and employer between him and the BSNL.

12. The second part of the reference order is regarding alleged termination of the services of the workman. In this regard the workman has pleaded that he worked continuously since 01.08.1998 to 01.11.2002 without any break for more than 240 days in each calendar year and his services has been terminated in violation to the section 25 F of the Act. In *2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another V. Jethabhai Pitamberbhai* Hon'ble Apex Court came to the conclusion that where the workman could be entitled for the protection of section 25-F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Hence, in view of the law cited hereinabove, it has to be seen as to whether the workman in the present industrial dispute has worked for 240 days in the 12 calandar years preceding the date of his termination or not. In the present case the workman has stated that he worked continuously for the period of his employment; but has not substantiated the same through documentary evidence such as payment or working details. In the evidence the workman has stated that he was given payment by obtaining his signature on plain paper affixing revenue stamp on it by the SDO. The documentary proof

relied upon by the workman towards his working is photocopy of the documents from paper No. 32/2 to 32/122, which seems to be the details of operation of the generator set whereas in his pleadings the workman has taken a clear cut stand that he has been employed in the BSNL w.e.f. 01.08.1998 as a Security Guard. The documentary evidence filed by the workman through the photocopies, which does not bear any stamp and signature of the authorities of BSNL, is in respect of generator operator, which is not the pleaded case of the workman. Nowhere in the pleadings has it been stated that he worked as a generator operator. Thus, what has been pleaded has not been proved and what the workman has tried to establish at the later stage is not his pleaded case. It is only at the stage of cross-examination workman has stated that he worked as a generator operator, which appears to be an afterthought. The evidence without pleading has no meaning. Hence, the photocopies filed by him, otherwise too not reliable, cannot be considered.

13. Thus, the workman has not become successful in substantiating this fact that he was on the rolls of the opposite party and he actually worked for 240 days in a year preceding the date of his alleged termination to enable this Tribunal that the management of the BSNL terminated his services in utter violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

14. In *(2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

16. Thus, I come to the conclusion that since there is no evidence on record, as discussed hereinabove, to prove that there was employer and employee relationship between BSNL and the workman. Also the workman did not succeed to prove that he worked 240 days in twelve calendar months preceding the alleged date of termination and his services have been terminated in violation of the provisions of Section 25 F of the Act, without giving him notice or notice pay in lieu thereof or any retrenchment compensation. Moreover, the workman also failed in substantiating that the management employed other persons in his place in violation to the provisions of Section 25-G, as he could not disclose the names of persons so employed.

17. Accordingly, the reference is adjudicated against the workman, Ram Raj Pandey and he is not entitled to any relief.

18. Award as above.

07th April, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1368.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर टेलीकॉम बीएसएनएल, मिर्ज़ापुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 72/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/10/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 72/2004) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief General Manager, Telecom, BSNL, Mirzapur and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-40012/10/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 72/2004

Ref. No. L-40012/10/2004-IR(DU) dated 16.07.2004

BETWEEN :

Sh. Chanchal Kumar Upadhyay
S/o Sh. Sadanand Upadhyay,
Village – Aswari, PO Raja Talab,
Distt. Varanasi (U.P.)

AND

The Chief General Manager
Telecom, BSNL
Mirzapur (UP)

AWARD

1. By order No. L-40012/10/2004-IR(DU) dated 16.07.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Chanchal Kumar Upadhyay S/o Sh. Sadanand Upadhyay, Village – Aswari, PO Raja Talab, Distt. Varanasi (U.P.) and the Chief General Manager, Telecom, BSNL, Mirzapur (UP) for adjudication.

2. The reference under adjudication is:

> "WHETHER THE EMPLOYEE-EMPLOYER RELATIONSHIP IS ESTABLISHED BETWEEN BSNL AND SH. CHANCHAL KUMAR UPADHYAY? IF YES, WHETHER THE ACTION OF THE MANAGEMENT OF BSNL, MIRZAPUR IN TERMINATING THE SERVICES OF SH. CHANCHAL KUMAR UPADHYAY S/O SH. SADAN AND UPADHYAY W.E.F. 1/11/2002 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF HE IS ENTITLED FOR?"

3. The case of the workman, Chanchal Kumar Upadhyay, in brief, is that he was employed at the Telephone Exchange, Adalpura, Distt. Mirzapur on the post of security guard w.e.f. 01.10.2000 without any appointment letter and worked as such till 01.11.2002 when his services has been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947 in spite of the fact that he worked for more than 240 days in each calendar year. It has been alleged by the workman that the management employed some other new persons in violation to the provisions contained in the Act. Accordingly, the workman has prayed that his termination order be set aside and he be reinstated with consequential benefits including back wages.

4. The opposite party has filed its written statement, denying the claim of the workman; wherein it has submitted that the workman was never engaged by it, as such, there arises no question of termination/retrenchment or violation of any of the provisions of I.D. Act. Moreover, it has been submitted that for supply of security guards an agreement has been entered into with some security agencies. It has been further submitted by the management that the workman never received any payment towards salary from the department directly; rather the management, as per terms of the contract, had always paid for the watch and ward services rendered by the security agency and at no point of time any payment was made to the workman by the management in lieu of his any services. The management has specifically submitted that the workman have been deployed by some security agency and on expiry of agreement, the services of the applicant were terminated automatically under the terms and condition of the agreement. Accordingly, the management has prayed that the claim of the workman be rejected without any relief to him.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim.

6. The parties filed photocopies of certain documents in support of their respective claim. The workman has examined itself in support of his averments made in the statement of claim; whereas the management has not produced any witness for examination in spite of several opportunity being given, which led to the presumption that the management does not want to produce any evidence vide order dated 05.03.2009; and the case was fixed for argument. The management moved recall application, which too was rejected due to non-prosecution. Accordingly, the date was fixed for arguments; and when the parties did not turn up for arguments, the case was reserved for award keeping in view long pendency of the case.

7. I have perused entire evidence on record.

8. The workman has come up with the case that he had been employed by the opposite party in one of its

Telephone Exchange since 01.10.2000 and he worked continuously up to 01.11.2002 for more than 240 days in each calendar year; but his services have been terminated without following the mandatory provisions of Section 25-F of the Act i.e. giving any notice or notice pay in lieu thereof or any retrenchment compensation. It has also alleged that the management also violated provisions of Section 25-G by employing other persons in his place after his termination.

9. Per contra, the management's case that the workman had never been an employee of the BSNL; rather he was supplied by one of the agencies, supplying security guard to it. It is very clear case of the management that the services of the workman got terminated automatically on expiry of contract between the management and the contracting agency; therefore, there is no substance in the claim of the workman as there was no relationship of employer and employee between the management and the workman at any point of time.

10. The workman in his statement of claim has pleaded that he has been employed as Security Guard w.e.f. 01.10.2000 and his services have been terminated vide letter dated 01.11.2002 by which his services were terminated. He has filed the photocopy of the letter dated 01.11.2002, terminating his services. The management has denied that letter dated 01.11.2002; but the workman failed to file the original one, which he is presumed to have. On the contrary, in this regard he has stated that its original is with the management. Also, the workman in its evidence has stated that he worked on the post of Chawkidar and Generator Operator; but no appointment order was given to him. It was also stated that his name was neither called from any Employment Exchange nor he was regularly appointed. It was further stated that no advertisement was publish nor he went through any examination or interview. The workman has filed the photocopy of certain documents paper No. 23/2 to 23/46 with list C-23 in support of his working details.

11. The schedule of reference, referred to this Tribunal is firstly regarding existence of employee and employer relationship between the workman and the management. The case of the workman is that he has been employed with the management of BSNL without any appointment letter on the post of Security Guard; and he worked accordingly, for two years and his services have been terminated by the management of BSNL in utter violation to the provisions of the I.D. Act. In rebuttal, the management of BSNL has denied the employment/ engagement of the workman at any point of time by it; rather it has been submitted that his services have been availed through some agency. The burden lies on the workman to prove that he was actually employed with the management of BSNL. In the event of denial of the management of BSNL regarding his employment, it was incumbent upon the workman to lead evidence to the effect that he was actually employed by the opposite party. As per his own statement, he was employed as Security Guard; but was not given any appointment letter. He has also stated that neither there was any advertisement regarding vacancy nor his name was sent by the Employment Exchange, nor he undergone any prescribed procedure for the appointment. On the contrary the management has pleaded that the workman's services were hired through some agency, which undergone a contract with the management for labour supply. It has also filed a copy of contract with the M/s. Lion Security Services, Varanasi. There was no denial from the workman of any such contract between the management of the BSNL and M/s. Lion Security Services, Varanasi. Admittedly, no appointment letter or pay slip, wage register, muster roll or attendance register etc. was filed before this Tribunal by the workman to prove this fact that there was any relationship of employee and employer between the workman and the management of BSNL. Hence, the workman has failed to substantiate its pleadings that he was employed by the BSNL on the post of Security Guard and there is no evidence to record this finding that there was any relationship of employee and employer between him and the BSNL.

12. The second part of the reference order is regarding alleged termination of the services of the workman. In this regard the workman has pleaded that he worked continuously since 01.10.2000 to 01.11.2002 without any break for more than 240 days in each calendar year and his services has been terminated in violation to the section 25-F of the Act. In *2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* Hon'ble Apex Court came to the conclusion that where the workman could be entitled for the protection of section 25-F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Hence, in view of the law cited hereinabove, it has to be seen as to whether the workman in the present industrial dispute has worked for 240 days in the 12 calandar years preceding the date of his termination or not. In the present case the workman has stated that he worked continuously for the period of his employment; but has not substantiated the same through documentary evidence such as payment or working details. In the evidence the workman has stated that he was given payment by obtaining his signature on plain paper affixing revenue stamp on it by the SDO. The documentary proof relied upon by the workman towards his working is photocopy of the documents from paper No. 23/3 to 23/46, which seems to be the details of operation of the generator set whereas in his pleadings the workman has taken a clear cut stand that he has been employed in the BSNL w.e.f. 01.10.2000 as a Security Guard. The documentary evidence filed by the workman through the photocopies, which does not bear any stamp and signature of the authorities of BSNL, is in respect of generator operator, which is not the pleaded case of the workman. Nowhere in the pleadings has it been stated that he worked as a generator operator. Thus, what has been pleaded has not been proved and what the workman has tried to establish at the later stage is not his pleaded case. It is only at the stage of cross-examination workman has stated that he worked as a generator operator, which appears to be an afterthought. The evidence without pleading has no meaning. Hence, the photocopies filed by him, otherwise too not reliable, cannot be considered.

13. Thus, the workman has not become successful in substantiating this fact that he was on the rolls of the opposite party and he actually worked for 240 days in a year preceding the date of his alleged termination to enable this Tribunal that the management of the BSNL terminated his services in utter violation of the provisions of Section 25 of the Industrial Disputes Act, 1947.

14. In *(2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in *2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer* as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/ workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

16. Thus, I come to the conclusion that since there is no evidence on record, as discussed hereinabove, to prove that there was employer and employee relationship between BSNL and the workman. Also the workman did not succeed to prove that he worked 240 days in twelve calendar months preceding the alleged date of termination and his services have been terminated in violation of the provisions of Section 25-F of the Act, without giving him notice or notice pay in lieu thereof or any retrenchment compensation. Moreover, the workman also failed in substantiating that the management employed other persons in his place in violation to the provisions of Section 25-G as he could not disclose the names of persons so employed.

17. Accordingly, the reference is adjudicated against the workman, Chanchal Kumar Upadhyay and he is not entitled to any relief.

18. Award as above.

Lucknow

07th April, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1369.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा एडिशनल मैनेजिंग डायरेक्टर आंटा गैस पावर स्टेशन आंटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 7/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/100/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 07/2013) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Additional Managing Director, Anta Gas Power Station, Anta and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-42011/100/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRESENT :

BHARAT PANDEY, Presiding Officer

I.D.7/2013

Reference No.L-42011/100/2012-IR(DU)
dated: 5.12.2012

The President
NTPC Karmchari Sangthan
NTPC, Anta,
Bara (Raj.)

V/s

The Additional Managing Director
Anta Gas Power Station,
Anta, Distt.:- Bara (Raj.)

Present:

For the Applicant Union : Ex-Party

For the Non-applicant : Sh. Satish Pareek, Advocate.

AWARD

4.3.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

"Whether the action of management of NTPC, Anta in transferring Shri Sanjeev Kapoor, General Secretary, Rashtriya Taap Vidyut Nigam Karmachari Sangthan, Anta vide order dated 11.5.2012 from NTPC, Anta to Jaipur with malafide intention and in order to victimise him is legal & justified ? If not, what relief he is entitled to?"

2. Pursuant to the receipt of the reference order, registered notices were issued & served on both the parties. On 10.9.13 none was present for applicant union & statement of claim was not filed. A.G.M.(HR), NTPC, Anta was present. Court was vacant. Next date 21.11.13 was fixed for statement of claim. Sh. Satish Pareek, Advocate, learned representative on behalf of the non-applicant appeared on 21.11.2013 with Shri Satyajeet Panda, A.G.M (HR), N.T.P.C., Anta. Applicant did not appear nor statement of claim was filed. Case was adjourned on 21.11.13 in the interest of justice and further opportunity was provided by Tribunal on its own motion to file statement of claim on 23.1.14. On 23.1.14 also statement of claim was not filed and none appeared on behalf of applicant union. Learned Representative of opposite party Shri Satish Pareek, Advocate was present. Case was again adjourned in interest of justice fixing 10.2.14 for filing statement of claim. On 10.2.14 applicant union again remained absent and no claim was filed. A.G.M. (HR) Sh. Satyajit Panda was present with learned representative for opposite party. In above circumstances despite registered service in the month of July, 2013 when no statement of claim was filed till 10.2.14 order for proceeding ex-party against the applicant union was passed on 10.2.14 & case was fixed for ex-parte hearing on 26.2.14. On 26.2.14 learned advocates were on strike, none was present for applicant union. Shri Ajay Kumar, Assistant Manager (Law) & learned representative for the opposite party were present for the opposite party & case was adjourned for ex-parte hearing on 3.3.14. On 3.3.14 when case was taken up at 15.10 hours for hearing no one was present from either side. In course of writing the order sheet for the day learned representative on behalf of opposite party appeared.

3. Heard the learned representative for opposite party.

4. It has been argued that in absence of statement of claim opposite party does not intend to file any reply & reference is liable to be answered in negative. It has also been argued that opposite party has always been in presence ever since service of notice but applicant union has never appeared or filed statement of claim till now hence, " No Claim Award" be passed against him.

5. In above circumstances, it is clear that no statement of claim along with evidence has been brought on record for adjudication of reference order under consideration on merits. Continuous non-appearance of the applicant union is indicative of the fact that applicant union is not interested & willing to contest the reference under

adjudication, hence, "No Claim Award" is passed in this case. The reference is answered accordingly.

6. Award as above.

7. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजिंग डायरेक्टर डीपीसी इंजीनियरिंग प्रोजेक्ट्स (पी) लिमिटेड, चेन्नई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 38/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/42/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 38/2013) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Managing Director, DPC Engineering Projects (P) Ltd., Chennai and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-42011/42/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 38/2013

Reference No.L-42011/42/2013-IR(DU)
dated: 22.7.2013

Shri Krishna Kumar
Through General Secretary
Rajasthan Casual Labour Union
Near Daga School, Bikaner.

V/s

The Managing Director
DPC Engineering Projects (P) Ltd.
G-2,38, Old No.73, Second Main Road,
Gandhi Nagar, Adayar,
Chennai – 600020.

AWARD

24.3.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 and 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> "Whether the action of the management of DPC Engg. Project Ltd., Chennai not to make payment of wages, Bonus and other dues to Shri Krishna Kumar, supervisor is fair, legal and justified? To what relief he is entitled to?"

2. After receipt of reference it was registered on 30.8.2013 and registered notices were sent vide order dated 6.12.2013 to both the parties for appearance on 7.1.2014 for filing statement of claim. Shri Krishna Kumar, the workman was served with notice but no statement of claim was filed from his side on 7.1.2014 as he was absent on that date. The notice sent to opposite party, the Managing Director DPC Engineering Project (P) Ltd. returned unserved with endorsement that the party had left the address. Endorsement has been made by postal department on 9.12.2013. On 7.1.2014 order was passed to send notice again to opposite party on the same address which was existing in the reference with observation that if workman appears then further information about address of opposite party may be secured from him if he is aware about change of address. Accordingly, next date 10.2.2014 was fixed for appearance of opposite party. On 10.2.2014 both the parties remained absent and registered notice sent to opposite party returned unserved again with endorsement dated 3.2.2014 that addressee has left. On 10.2.2014 also no statement of claim was filed by applicant despite service and further provided opportunity. It was expected that if workman turns up on 10.2.2014 address of the opposite party will be asked from him but applicant failed to come in appearance to file statement of claim. On 10.2.2014 further order was passed to sent process of service to opposite party under certificate of posting but the same was not sent because notices sent by speed post were sent with acknowledgement which have come back and the receipt of speed post is already on record. On 10.2.2014 further opportunity was given to applicant fixing 10.3.2014 for filing statement of claim and the case was adjourned on 10.2.2014 in above circumstances. On 10.3.2014 again none appeared for applicant and statement of claim was not filed on 10.3.2014 also. Learned advocates were on strike on 10.3.2014 hence, further case was adjourned fixing 13.3.2014 for filing statement of claim. Address of the opposite party remained unknown to the Tribunal because of non-appearance of the applicant who was believed to be a source of information in estimation of the court.

3. On 13.3.2014 neither anyone appeared on behalf of applicant nor statement of claim was filed. In above circumstances, address of the opposite party could not be secured and thus opposite party remained unserved and Tribunal was compelled to reserve the file for answering the reference without statement of claim and evidence in support thereof.

4. In above facts and circumstances, due to continuous absence of applicant and absence of claim filed by him adjudication of reference on merit has become impossible, hence, "No Claim Award" is passed against reference under adjudication. The reference in question is answered accordingly.

5. Award as above.

6. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1371.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाईस चांसलर जवाहरलाल नेहरू यूनिवर्सिटी नयी दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 18/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-42012/67/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 18/2014) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vice Chancellor, Jawaharlal Nehru University, New Delhi and their workman, which was received by the Central Government on 24/04/2014.

[No. L-42012/67/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No. 18/2014

Shri Manoj Kumar
S/o Sh. Brij Bhushan
Vishwas Nagar, Shahdara,
Delhi-110032. ...Workman

VERSUS

The Vice Chancellor,
Jawaharlal Nehru University,
New Delhi-110087. ...Management

AWARD

School of Physical Sciences (in short the School), Jawaharlal Nehru University (in short the University) established in 1986, has grown manifold as far as its activities are concerned. Due to manifold increase of activities of the School, shortage of staff, particularly, store keepers, caretakers and lab. attendants remains there. Posts of non-teaching (technical staff) for the School are being sanctioned by University Grants Commission (in short the Commission), which posts are to be filled in phased manner, as per recruitment rules, under intimation to the Commission. Hence the School avails services of M/s. Good Housekeeping Regd. (hereinafter referred as the contractor), University's service provider for the posts of store keepers, caretakers and lab. assistant.

2. Services of Shri Manoj Kumar were availed by the School as lab. attendant with effect from 15-09-2008 through the contractor. The contractor dispensed with his services on 04-01-2012. He raised a notice of demand on the University seeking reinstatement in service of the School with continuity and full back wages. His demand was not conceded to by University. Aggrieved by the said act, he raised a dispute before the Conciliation Officer, who entered into conciliation proceedings. During pendency of the conciliation proceedings, he raised a dispute before this Tribunal using provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). The dispute culminated into an award dated 12-8-2013.

3. Despute passing of the award, referred above, the claimant remained associated with the conciliation proceedings. The conciliation proceeding failed since the University resisted his claim. On consideration of failure report, so submitted by the conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adiudication, using its powers under section 10(1)(d) of the Act vide order No. L-42012/67/2013-IR(DU), New Delhi dated 21-01-2014 with following terms:

> "Whether the action of the management of JNU in terminating the services of the workman, Shri Manoj Kumar, S/o Shri Bhushan with effect from 04-01-2012 is illegal and/or unjustified and, if yes, to what relief is the workman entitled and what directions are necessary in this respect?"

4. Claim statement was filed by the claimant pleading that he joined services of the School on 01-07-2008 as waterman. On the basis of his performance, he was appointed as lab. attendant on 15-09-2008 in place of Shri Narender Kumar, who was appointed as lab. assistant, by the School. He rendered continuous service till

4-1-2012. He availed two days leave on account of his illness due to which his services were dispensed with in an illegal manner. No one months' notice or pay in lieu thereof was paid to him, No charge sheet was served on him. The said order is violative of the provisions of section 25F of the Act.

5. Claimant presents that notice of demand was sent to the University 02-11-2012, which did not elicit any response. Constrained by these circumstances, he raised a dispute before the Consiliation Officer on 07-01-2013. The University filed its reply dated 20-02-2013, which was followed by rejoinder, filed by him. On 09-04-2013, conciliation proceedings ended into a failure due to adamant behaviour of the University. He claims reinstatement in service of the School with continuity and full back wages.

6. Claim was demurred by the University, pleading that the claimant was engaged as lab assistant by the contractor to discharge his contractual obligations. He rendered service to the contractor for a period of three and half years. The University never paid him wages/salary. Since there were complaints against the claimant, the University requested the contractor to transfer/withdraw his services. The contractor dispensed with his services. The university, being the principal employer, has no liability towards the claimant. His claim, being devoid of merits, may be desmissed, pleads the University.

7. Copy of award dated 12-08-2013 passed by this Tribunal in ID No. 113 of 2013 titled as Manoj Kumar vs. Vice Chancellor, Jawaharlal Nehru University, was relied on behalf of the University, wherein clear cut findings have been recorded to the effect that the claimant was an employee of the contractor and not of the University.

8. Arguments were heard at the bar. Ms. Sulekha Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Pawan Kumar, Section Officer, raised submissions of behalf of the University. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

9. Ms. Sharma does not dispute that this Tribunal entered into articulation of facts when the claimant raised a dispute by using powers contained in section 2A (2) of the Act. It is also not disputed that the Tribunal passed an award dated 12-08-2013. She concedes athat in that award the Tribunal could not grant any relief to the claimant, in view of the fact that services of the claimant were availed by the contractor to discharge his contractual obligations. The claimant admitted himself to be an employee of the contractor and not of the University. The Tribunal recorded findings in the award dated 12-8-2013 that relationship of employer and employee never existed between the claimant and the University.

10. Whether the claimant can agitate the very issue which has been adjucicated on strength award dated 12-8-2013? For and answer law relating to applicability of doctrine of res judicata is to be taken note of Law laid under section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Chosal (AIR 1960 S.C. 941) in following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because on appeal was taken to a highet court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again",

11. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been as suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsenquentrly raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

12. In Nawab Hussain, (1977 Lab. I.C. 911), the Apex Court enunciated genera Principles of doctrine of res-jucicata as under.

> "The principle of estoppel per res judicata is a rule of evidence. As has been stated in marginson v. Blackburn Borough Council [1939 (2) KB 426 at P. 437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality

and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjucicated upon. It is thus not permissible to obtain a second judgment for the same civil on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pjronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata".

13. But there is no provision in the Act indicating as to when and under what circumstances the subject matter covered by an industrial award can be validly referred for adjudication again after termination of such award; whether an award given on a mater in controversy between the parties after its termination in terms of sub-section (6) of section 19 of the Act, after expiry of the period of one year as postulated by sub-section (3) of section 19 of the Act, would operate as res judicata to a subsequent reference of the same matter after adjudication or whether the Tribunal has no option when such a matter is again referred to it for adjucication but to proceed to try it de novo, traverse the grounds again and come to a fresh decision? These questions where addressed to by the apex court in Burn & co. Ltd. [1957 (1) LLJ 226] and held that though section 11 of the Code, in term, is inapplicable to industrial adjudication, the principle underlying it expressed in the maxim "interest rel publicae ut sit finis litium", which is founded on sound public policy and is of universal application being a rule 'debated by a wisdom which is for all time' is applicable to the decisions of industrial adjudicator for 'good reasons'. Approving the decision of the labour Appellate Tribunal in Army and Navy Stores Ltd. [1951 (2) LLJ 31] and Ford Motor Co. of India Ltd. [1951(2) LLJ 231], the Court ruled that it would be contrary to the well recognized principles that a decision once rendered by competent authority as a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It was further pointed out that if 'an adjucication loses its force when it is repudiated under section 19(6) of the Act and the whole controversy is at large, then the result would be that far from reconciling themselves to the award and setting down to work it, either party will treat it as a mere stage in the prosecution of prolonged struggle and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing thime before resuming hostile action with renewed vigour. But realizing that in a case of fixation of wage structure principles of res-judicata would not apply, the Court added that by regarding the awards of industrial adjucicatiors to have ong terms of operations and liable to be modified bny change in the circumstances on which they were based, the object of the Act would be served. Thus, it emerges that general principles of res-judicata will apply to the dicisions of the industrial adjudicators but the awards, bassed on prevailing circumstances such as wage structure and dearness allowance etc. though normally treated to have long term operations, should be liable to be modified by change in circumstances on which they are based.

14. In India General Navigation and Railway Co. Ltd. [1960(1) LLJ 561], Balmer Lawrie and Co. Ltd [1964 (1) LLJ 380] and Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. [1969 (1) LLJ 734\]), the Apex Court ruled that the awards based on prevailing circumstances are liable to be modified by change in circumstances on which they were based. The Calcutta High Court in Shankar Prasad Banerjee [1975 (1) LLJ 71] stated above principle with precision and clarity in following words.

> ***the principle of res judicata would be normally applicable to industrial adjucications or awards as industrial settlements are intended, consistent with the policy fo the Industrial Disputes Act, 1947, to be operative for a fairly long period unless there is change of circumstances which may be basis of the award in cases where the award is bases on prevailing circumstances like determination of wage structure and the like or existing preice indes with the constant change of circumstances like spiraling of prices, the principle of res-judicata would be inappropriate and inapplicable. Such principle would however be applicable when the award is not based on prevailong circumstances but on rights claimed long existing but found bny the labour Court as non-existent and there is no scope for any change of the rights of in the claim of the workman on the employer by reason of change of circumstances. In this state of affairs, there can be no dispute that in such cases, the principle of res-judicata would have full application.'

15. As noted above principle of res-judicate are applicalbe to industrial adjudication too. Award dated 12-8-2013 was on the matter which are directly and substanitial in issue in the dispute under reference between the same parties. Those issues were adjudicated by this Tribunal, which is competent to adjudicate the subsequent dispute too. All ingredient of doctrine of res-judicata stand satisfied. Hence by application of principles of res-judicata, the claimant is estopped from agitating those very issues, which were answered in award dated 12-8-2013.

16. There is other facet of the coin. Whether the appropriate Government was justified in making the present reference, during the period when award dated 12-08-2013 subsists? As facts highlight, reference is between the same parties on the same facts which has been adjudicated vide award dated 12-8-2013. When award dated 12-08-2013 is in force, in respect of the industrial dispute, appropriate Government cannot refer the said dispute afresh to this Tribunal by merely changing the phraseology of the dispute. This Tribunal will not have any jurisdiction to entertain the fresh reference in respect of the subject matter, on which award dated 12-8-2013 binds the parties. There can be no reference when a valid award subsists. The Tribunal cannot invoke its jurisdiction to entertain this subsequent reference made by the appropriate Government, without application of mind. In case, precedents are needed, reference can be made to British India Corporation Ltd. (13 FJR 352) and Bangalore W.C. & Mills Ltd. (1968 (1) LLJ 55).

17. In view of the facts, referred above, it is crystal clear that during the currency of the award dated 12-08-2013, the appropriate Government was not competent to refer the dispute afresh for adjudication. The Tribunal cannot invoke its jurisdiction on the reference order. Consequently, the reference order is discarded with the observation that it is incompetent. An award is, accordingly, passed, it be sent to the appropriate Government for publication.

Dated : 16.04.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2014

का.आ. 1372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा टेलीकॉम मेंटेनेंस पटना के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 2001 का 88) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/574/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th April, 2014

S.O. 1372.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 88 of 2001) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Maintenance, Patna and their workmen, which was received by the Central Government on 24/04/2014.

[No. L-40012/574/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D.Act. 1947

Ref. No. 88 of 2001

Employer in relation to the management of Telecom Maintenance, Patna

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Sri D.K.Verma, Advocate

For the workman : Sri N.N.Sinha, Advocate

State : Bihar Industry : Telecom

Dated : 24/3/2014

AWARD

By Order No.L-40012/574/2000-IR (DU), dated.26/03/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the management of Director of Telecom maintenance, Patna in terminating the services of Sh. Vijay Kumar, Casual workman at Patna w.e.f. 01.08.98 is justified and whether repeated termination of the services of the workman on various dates from 28.02.97 to 31.07.98 amounts to unfair labour practice? If so to what relief the workman is entitled?"

2. This Case is received from the Ministry of Labour & Employment on 16.01.2001. After receipt of reference , both parties are noticed. The workman files their written statement on 03.07.2001. The management files their written statement on 17.04.2002. One witness has been examined on behalf of the management but three witness are examined on behalf of the workman.

3. The admitted case of the parties that the workman was working as casual employee and was getting salary and the management's case is that the workman did not work continuously but intermittently as and when required.

4. Whereas it is the case of the workman that he was engaged continuously, though he was designated by the management as casual employee. From the documents filed by the workman, it is clear that he was engaged continuously.

5. Moreover certain documents filed by the workman belonging to management, direction was issued to regularize SC, ST workman who were engaged casually But it is not understood, why discrimination was made against the present workman. WW-1 has stated that he was a member of Union and casual employee and he has been regularized. He has stated that the present workman was also working continuously.

6. The MW-1 has not denied regarding engagement of casual workman . But remained silent , why the matter of their regularization is not taken of. In the Opinion of the Tribunal equally placed workman under no circumstances be treated unequally in the eyes of management .

7. Considering the facts and circumstances of the case, I hold that the action of the management of Director of Telecom maintenance, Patna in terminating the services of Sh. Vijay Kumar, Casual workman at Patna w.e.f. 01.08.98 is not justified , Hence it is ordered to reinstate the workman & regularized him once after publication of the award . The management is directed to intimate this Tribunal, If the award is implemented.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1373.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 01/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/12/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 01/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12012/12/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT CHENNAI

Tuesday, the 25th March, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 1/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN

Sri B. Eswaramoorthy : 1st Party/Petitioner

AND

The Zonal Manager : 2nd Party/Respondent
Indian Bank, Zonal Office
Divya Towers, Fort Main Road
Salem-636001
Tamil Nadu

Appearance :

For the 1st Party/ Petitioner : Sri J. Suresh, Authorized Representative

For the 2nd Party/ Management : M/s T.S. Gopalan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No.L-12012/12/2012-IR (B-II) dated 27.12.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Zonal Office, Salem in imposing the punishment of "Dismissal without Notice" upon Sri B. Eswaramoorthy, an Ex-Agriculture Assistant, Konganapuram Branch vide order dated 27.12.2010, is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 1/2013 and issued notices to both sides. The petitioner is represented by Authorized Representative and the Respondent through counsel and have filed their claim and counter statement respectively. The petitioner has filed rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent as Clerk in January, 1983. Subsequently, he was assigned the post of Agriculture Assistant. While the petitioner was working in Konganapuram Branch in this capacity, he was placed under suspension on 11.01.2010. Subsequently, a Charge Memo dated 28.01.2010 was issued to the petitioner. Five charges were raised against the petitioner in the Charge Memo. It is alleged that the petitioner had obtained the Pay Orders issued to two Self Help Groups by name Malligai Mahalir Sangam and Velavan Self Help Group for Rs. 3.00 lakhs each, encashed

the amount from the proprietor of a textile shop and paved way for the misuse of entire loan receipts without creation of assets, that he had appropriated Rs. 7,500/- out of the amount due to Malligai Mahalir Sangam and Rs. 9,500/- out of the amount due to Velavan Self Help Group, that he received illegal consideration of Rs. 2,000/- from Shanthi, a PLF member and Lakshmi, the Animator of Malligai Mahalir Sangam and Rs. 3,000/- from Indirani, the representative of Velavan Self Help Group for unauthorized service rendered by him, helped impersonation of Vasanthi, representative of Malligai Mahalir Sangam by Shanthi and also obtained the signature of Lakshmi of Malligai Mahalir Sangam in the remittance challan and closed the loan account of Sangam without receiving any money from the Sangam, on his own. The petitioner had given explanation to the Charge Memo. However, the Respondent was not satisfied and ordered departmental enquiry against the petitioner. The Enquiry Officer entered a finding against the petitioner after the enquiry and the Disciplinary Authority who accepted the enquiry report imposed the punishment of dismissal without notice on the petitioner, after hearing. The petitioner had raised Industrial Dispute, aggrieved by this order of the Disciplinary Authority. The conciliation proceedings ended in failure and the matter has been referred to this Tribunal by the Government on the basis of the failure report given by the Assistant Labour Commissioner (Central). The petitioner has not committed any of the misconducts alleged against him. The Charge Sheet served on the petitioner is very vague. The dismissal of the petitioner form the service of the Respondent is illegal and unjustified. An order may be passed setting aside the punishment and directing the Respondent to reinstate the petitioner in service with back wages and other benefits.

4. The Respondent has filed Counter Statement contending as follows :

The Govt. of India had introduced SGSY Scheme to assist the poor families to bring them above the poverty line. Such assistance can be to individuals or Self Help Groups. Respondent Bank had been lending to Self Help Groups based on group saving and related to an economic activity undertaken by the Group, without any collateral and liberal terms of payment. The Konganapuram branch had Self Help Groups (SHGs), including Malligai and Velavan groups. On 29.10.2009, members of Malligai Group had come to the branch and complained to the Branch Manager that though they had signed loan documents, they had not received any loan. The agitation carried out by them was flashed in the print media and electronic media. Consequently, on 30.12.2009 the Lead Manager visited the branch and this was followed by a snap inspection by Senior Manager (Inspection). During inspection, it was revealed that the petitioner had obtained two quotations for Rs. 3.00 lakhs each purportedly for the supply of readymade garments to the two Self Help Groups, Malligai and Velavan for starting retail business in garments. The petitioner collected the two Bank Pay Orders in favour of the Self Help Groups, took them to the proprietor of Shanthi Silk House and encashed them after deducting Rs. 7,500/- from the amount due to Malligai group and Rs. 7,500/- from the amount due to Velavan Group also. He paid Rs. 2.85 lakhs to Shanthi and she gave him Rs. 2,000/-. He paid Rs. 2.83 lakhs to Indirani of Velavan Group who paid him Rs. 3,000/-. Another Rs. 40,000/- was paid to Shanthi who was a terminated employee of the NGO. The balance of Rs. 2.40 lakhs was shared among the members. When the members of Malligai Group made an agitation on 29.12.2009, the petitioner mobilized funds and closed the loan of Malligai Group. Another loan was also closed in due course. A Charge Sheet was issued to the petitioner leveling five charges. The explanation given by the petitioner to the Charge Sheet was not satisfactory. So an enquiry was ordered. The Enquiry Officer had submitted report against the petitioner and the petitioner's comments were invited on this. After this, the petitioner was awarded punishment of dismissal from service. It is incorrect to state that the Charge Sheet served on the petitioner is vague. There was ample evidence before the Enquiry Officer to conclude that the charges were proved. The dismissal of the petitioner is to be upheld.

5. The petitioner has filed a rejoinder denying the allegations made in the Counter Statement and also reiterating his case in the Claim Statement.

6. The parties have no case that the domestic enquiry was not conducted in fair and proper manner. The petitioner has adduced evidence before this Court only to state that he was not gainfully employed after he was dismissed from service. The parties have been relying upon the enquiry proceedings to advance their respective cases.

7. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Exts.W1 to Ext.W66 and Exts.M1 to Exts.M5

8. **The points for consideration are**:

(i) Whether the action of the Respondent in imposing the punishment of Dismissal without Notice upon the petitioner is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

9. The petitioner was admittedly working as Agriculture Assistant in Konganapuram Branch of the Respondent Bank at the time of the alleged incident. Though the Respondent had framed five charges against the petitioner, all these relate to the same incident. The Konganapuram Branch was having two Self Help Groups by name Malligai and Velavan in its fold. It had sanctioned Rs. 3.00 lakhs each to these two groups under the SGSY Scheme. The

petitioner is said to have approached these groups and obtained the Pay Orders for the amount. Then he went to one Selvaraj, the proprietor of a cloth house at Konganapuram and obtained quotation for cloth materials on behalf of the two groups. He encashed the amount from the proprietor who had taken Rs. 7,500/- as commission from the amount due to each group. He received Rs. 2,000/- as illegal gratification from the Animator of Malligai Group and one Shanthi, a PLF member and another Rs. 3,000/- from Indirani, a representative of Velavan Group. He is alleged to have helped Shanthi to impersonate Vasanthi, a representative of Malligai Group. The members of Malligai Group are said to have started an agitation before the Branch stating that they did not receive the loan amount that was sanctioned. On the next day, the petitioner is said to have closed the loan account of Malligai Group by himself obtaining the signature of the Animator of the Group in the remittance challan.

10. In the enquiry proceedings the management had examined nine witnesses apart from marking the relevant documents. On the side of the petitioner, he had examined himself. The question to be considered is whether the allegations made against the petitioner are substantiated by the evidence tendered by the Management in the enquiry proceedings.

11. The first witness examined as MW1 by the Management in the enquiry proceedings is the one who conducted snap inspection and submitted report. This report is based on the statements said to have been obtained from Vasanthi who was allegedly impersonated, Lakshmi, the Animator of Malligai Group, Shanthi, the PLF member, Indirani, the representative of Velavan Group, a group statement from a group of members of Malligai Group, etc. His evidence also is based on the statements said to have been given by these persons. MW2 is the one who had also given a report regarding the incident. He had also obtained the statements of some persons connected with the incident. He had given the report based on the investigation made by him as directed by the Deputy General Manager. The Deputy General Manager himself had accompanied him during the investigation. MW5 is the Assistant Branch Manager of Konganapuram Branch. He has given a statement during investigation by MW2.

12. It could be seen on going through the enquiry proceedings that most of the persons who could have spoken about the alleged act of misconduct done by the petitioner were not examined. Selvaraj, the proprietor of the cloth store from whom the petitioner had allegedly obtained quotation and encashed the Bank Pay Order deducting some amount is said to have given statement to MW2. The statement is marked as MEX-3 in the proceedings also. However, even in the statement it is recorded that the person who gave the statement has refused to put his signature in the same. Two others who are conspicuous by this non-examination are Lakshmi and Shanthi. But their statements are liberally used by the Enquiry Officer to fasten the charge on the petitioner.

13. The three persons examined in connection with the incident are Indirani (MW7) the representative of Velavan Group, Vasanthi (MW8), representative of Malligai Group said to have been impersonated by Shanthi and Jaya (MW9) a member of the same group. However, the evidence of these witnesses do not help the Respondent at all. MW7 has owned her statement marked as MEX-11 during her examination. She is the one who had allegedly paid Rs. 3,000 to the petitioner on receiving the amount towards the Pay Order. What she has stated is not that she has given any amount to the petitioner. Her version during examination in the enquiry is that she had obtained the quotation and paid Rs. 17,000 as commission to the proprietor and shared the balance amount among the members. According to her, she did not pay any amount to the petitioner. She was declared hostile and was cross-examined by the Management. She stated during cross examination that she obtained quotation from the proprietor of Shanthi Silk House and gave Rs. 17,000 as commission to him. She stated that MEX-11 the statement was obtained from her house. The Manager and another Officer had been to her house. She stated that she was very tense and out of fear she had given the letter. The fact remains that this witness has disowned the contents of the statement said to have been given by her and had given a version totally against her statement, in evidence.

14. The next witness who could have thrown some light on the incident is Vasanthi, MW8. She admitted that MEX-8 was the statement given by her. She has stated during the examination that she stands by her statement. During the later stage of her examination by the Presenting Officer himself, her version is that she came to know about the forgery on coming to the bank and went to the village and informed all the members about it and brought them to the Bank.

15. MW9 is a member of Malligai Self Help Group. She has given a statement and this has been marked in the enquiry proceedings. She has stated that the members of the Group had given a statement to the effect that they were not aware of the loan of Rs. 3.00 lakhs sanctioned by the Bank.

16. On going through the report of the Enquiry Officer it could be seen that the finding is mainly an exercise based on the statement of the witnesses who were not examined in the enquiry proceedings and the reports of investigation done by the Bank. Most of the witnesses other than MW7 to MW9 are not connected with the incident. MW3 and MW6 were of course examined to prove that it is the petitioner himself who has closed the

account of Malligai Group on his own volition and that the members themselves have nothing to do with this.

17. It could be seen on an appraisal of the evidence tendered in the enquiry proceedings that the Management has totally failed to establish the charges that were leveled against the petitioner. The gist of the first charge of the petitioner is that he had obtained the Pay Orders in faovur of Malligai and Velavan Group, approached the proprietor of Shanthi Silk House and encashed the amount thus facilitating misuse of entire loan proceeds without creation of assets. When Pay Order is issued the proprietor was expected to supply cloth materials to the Self Help Group and not to pay cash itself to them. The implication is that against this he had paid the amount deducting his commission and that also not to the members of the Self Help Group but to the petitioner who is an Officer of the Bank. The first person who could have stated anything in this respect is the proprietor of the cloth shop. The statement of this individual is said to have been recorded by MW2 and the statement is marked in the enquiry proceedings also. However, the concerned person was not brought to the witness box to speak about the incident. In spite of this, the Enquiry Officer has relied upon this statement. The Enquiry Officer has given his own reason also for accepting this statement as well as the statement of other persons also who were not before him but who had allegedly given statements. The Enquiry Officer has stated in his report that the Vigilance Administration Manual of the Respondent Bank has provided that if the signatories of the statement could not be brought out in enquiry in spite of best efforts, the Enquiry Officer can rely on the evidence of the person who knows about the document or come across the document. I am unaware if the Respondent Bank has accepted such a procedure for its disciplinary proceedings. Inside the Bank itself they might have felt it sufficient. But they should have known that it would not stand scrutiny of law, once the validity of the enquiry report is challenged. The action of the Enquiry Officer in relying on the statement of the proprietor who has not come forward give evidence in the enquiry could not be justified at all.

18. Is there any other evidence available to show that the petitioner himself has obtained the Pay Order from the Animator of Malligai Self Help Group and the representative of Velavan Self Help Group? The next person who could have given some help in this respect is Lakshmi the Animator of Malligai Group and Indirani, the representative of Velavan Group. Lakshmi is not examined at all. Her statement said to have been obtained by MW1 who conducted snap inspection is marked in spite of this. As already stated the Enquiry Officer should not have relied upon the statement. Indirani, the representative of Velavan Group is examined as MW7. However, this witness did not support the Management. Her statement marked through MW1 is to the effect that the petitioner and Shanthi had brought the money to her house and handed it over to her. However, during her examination, she has denied this case. According to her, neither of them have given any amount to her. She then stated that she has obtained quotation from the proprietor of Shanthi Silk House and she had given Rs. 17,000 as commission to him. According to her, it was on suggestion of Shanthi they have applied for loan. She stated that the petitioner had been helpful in getting the loan. According to her, it was as requested by the Manager and the Officer who was along with him she has given statement to the effect that the petitioner had handed over the amount. In this respect the evidence given by MW2 is relevant. MW2 has stated that when he went to the locality for investigation the Head of the Circle was also present alongwith him. According to MW7, she had given the statement out of fear. It is one thing to declare a witness as hostile and cross-examine the witness. In utter disregard to the entire version given by the witness in cross-examination her statement has been relied upon. The cross-examination is intended to bring out the truth from the witness. Even if the actual state of affairs could not be brought out on cross-examination, it does not mean the statement given by her earlier could be accepted wholly without giving any consideration to her version that what she has stated in the statement is not correct. The Enquiry Officer should not have accepted the statement of this witness when she herself has given a version totally contradictory, during her examination. There is absolutely no material in support of the first charge.

19. The second charge against the petitioner is that he had directly received Rs. 2,92,500, the amount after deducting Rs. 7,500 towards commission of the Proprietor as per the Pay Order of each Groups but handed over Rs. 2.85 lakhs only to Shanthi on behalf of Malligai Group and Rs. 2.83 lakhs only to Indirani, MW7 on behalf of Velavan Group and has thus misappropriated Rs. 7,500 from the proceeds of Malligai Group and Rs. 9,500 from the proceeds of Velavan Group. This second charge is a corollary to the first charge. When there is no material to support the first charge itself there is no question of proof of the second charge also.

20. The fate of the third charge is also the same. The allegation is that Shanthi to whom the loan proceeds of Malligai Group was given had paid Rs. 2,000 to the petitioner and MW7 to whom the loan proceeds of Velavan Group had paid him Rs. 3,000 as consideration for the services rendered by him and thus he has received illegal gratification from these persons. When there is no evidence regarding payment of the amount itself there is no question of proof of receipt of illegal gratification also.

21. Another allegation against the petitioner is that he helped Lakshmi, the Animator of Malligai Group to impersonate Vasanthi, a representative of the Group. It is

pointed out on behalf of the petitioner that such impersonation would not have been possible for him at all. MW1 who has given the investigation report has stated about the procedure for sanction of loan. He has stated during his examination that it is the duty of the Branch Manager to identify the borrower and approve the loan. It is not the function of the petitioner who is working as Agriculture Assistant. Vasanthi who is said to have been impersonated with the assistance of the petitioner has been examined. The concerned loan application or the other loan papers are not seen put to this witness by the Presenting Officer. One document that was put to her is the statement said to have been given by her. But rather than her own statement, the statement of Lakshmi was put to her and she has owned that statement. It is stated on behalf of the petitioner that this was because she was tutored to give evidence. She has also identified the statement said to have been given by the members of Malligai group denying previous knowledge of the loan. During cross-examination, the resolution passed by the Group for loan has been put to MW8 and she has stated that the signatures found in the document are not of the members. However, it has come out during examination that the meeting was conducted in the presence of the Branch Manager. So it is apparent that members had resolved to get loan from the bank. If other members had put their signatures in the presence of the Branch Manager it is unlikely that MW8 herself has not put the signature in this. MW1 who did the snap inspection has admitted that apparently there is no difference in the signature of MW8 found in the resolution and the signatures purported to be that of MW8 in the other loan documents. This is to be read alongwith the fact that it is the Branch Manager who is to identify the borrower and approve the loan. The Branch Manager has been examined as MW4. He has stated during his cross-examination that he has no proof except the statement given by MW8 disowning her signature to the effect that her signature was forged. He has further stated that he was under the impression that the petitioner would have obtained the signatures of members after verifying the photos affixed in the card of the Self Help Group available in the Bank. But this seems to have been the duty of the Manager himself. The petitioner himself has been examined as DW1. According to him, on verification of the sanctioned ticket, he used to hand over the loan documents to the members of the Self Help Group who will be coming in groups for obtaining the signature and they used to go out to get the signatures and hand over the documents to the Manager. According to him, since the signatories have not signed before him, he could not state anything about the forgery that has been allegedly made. MW1 has stated during cross-examination that MEX-47(13/30) and (15/30) two of the loan documents are in the handwriting of the Branch Manager. This aspect strengthens the version of the petitioner in this respect. According to MW8 Lakshmi admitted to the Manager that she got the signature outside bank premises through Shanthi. In Ext.W5, MW2 has stated that the signatures of members are known to have been obtained by Lakshmi and Shanthi from their houses.

22. MW9 who is a member of Malligai Group was brought in to state that the members of the Group were not aware of the loan sanctioned. When her statement was put to her, she stated that she is illiterate. When the loan documents were put to her, she has stated that signatures in the loan documents were obtained from all the members except MW8, the representative. She has stated that she does not know if the signature of MW8 could have been obtained later. When she was asked what is written in the statement purportedly given by her, she stated that she does not know. Again she stated that she was told that if she is to get a new loan she is to give such statements to the Manager and it was only on account of this, she has signed. So it is clear that even the investigation in which the statements of concerned persons were recorded was not a fair one. It is on such statements, the Enquiry Officer has relied upon. If all the other members have signed in the loan papers, Why should MW8 alone be omitted? The version of MW1 that there is no apparent difference in the signature of MW8 found in the resolution and in the loan papers is also to be referred to at this instance. It is very much apparent that MW9 had signed the loan papers and so also other members had.

23. In fact there is no material at all to show that any forgery has taken place at all. There is absolutely no material to show that the petitioner has helped in forging the signature of MW8, even if any forgery was there. This charge against the petitioner also is not established.

24. The next charge against the petitioner is that he closed the loan account of Malligai Group by remitting the amount by himself without receiving any money from the Group. The case is that the petitioner has withdrawn amount from his account and also borrowed from MW3 the tiny deposit agent of the branch for this purpose. The assumption seems to be that it was only because the petitioner had committed the alleged misconducts he had remitted the amount on his own and so he is to be presumed to have committed those misconducts on account of this remittance of the amount and closure of the account itself. MW3, the tiny deposit agent and MW6, a clerk of the Bank are brought in to give evidence in this respect. MW3 has withdrawn Rs. 1,30,000/- from the Bank on 30.12.2009. This is the date on which the account of Malligai Group was closed. MW3 has stated that he had asked the Cashier to give the amount to the petitioner. The petitioner had admitted during his examination that he has borrowed amount from MW3, but according to him, it was not on 30.12.2009. His further case is that the borrowal was for his personal purpose. MW6 was working as Clerk of Konganapuram Branch at that time. He had given

statement regarding closing of loan account of Malligai Group. The Pay Order in respect of Rs. 1,30,000/- given by MW3 was put to this witness and he has stated that he has given the amount to MW3 and MW3 had given it back to him asking him to pay the amount to the petitioner. The Pay Order given by the petitioner for withdrawal of Rs. 1,67,000/- also is marked through this witness. MW6 has stated that he gave the amount to the petitioner and he gave back the amount and asked him to adjust the amount towards the account of Malligai Group. The challan given by Malligai Group for remittance of the amount also is produced and marked through this witness.

25. It is clear from the evidence that the challan contained the signature of the Animator of Malligai Group and Shanthi who had allegedly impersonated MW8. The challan was given for the purpose of remitting the amount. The allegation is that the petitioner managed to obtain the signatures of these persons in the challan and remitted the amount himself. For this purpose, he obtained loan Rs. 1,30,000/- form MW3 and withdrew Rs. 1,67,000/- from his own account, it is stated. The Authorized Representative of the petitioner has pointed out that there is no evidence to show that the amount withdrawn from the account of MW3 or from the account of petitioner himself could have been used for the remittance of the amount. Referring to the reverse side of the Pay Order which is marked as MEX 35-2/2, it has been pointed out that the denominations of notes are in hundreds. Showing this the figures 100 x 1670 is written on MEX 35-2/2. So also the denominations of notes obtained on withdrawal of Rs. 1,30,000 also are in hundreds. This is brought out through MW6 on cross-examination. The case of MW6 is that he had given the amount to the petitioner and the petitioner had given back the amount to him asking him to adjust the amount towards Malligai Self Help Group. The challan for remittance of Rs. 2,97,260/- for Malligai Group also has been marked through MW6. According to MW6, the challan was handed over by the petitioner at the instruction of the Manager. If the amount obtained on withdrawal from the account of MW3 and the petitioner were used for remittance as per the challan of Malligai Group, the same denomination of notes found in the Pay Orders for these withdrawals should have found a place at the time of remittance also. However, as seen from the documents, payment was made in Rs. 1000/- denomination and not in Rs. 100/- denominations. How this has occurred is not explained by MW6. The Enquiry officer has brushed this fact aside stating that this is not at all relevant. Though the credit voucher for Rs. 1,30,000/- and the account of MW3 refers to transfer of amount to the account of the petitioner there is no corresponding credit entry in the account of petitioner.

26. The case of the petitioner is that alongwith the letter of the Animator and another the Manager brought cash and handed over the cash to MW6. The letter by the Animator said to have been given on the eve of remittance of the amount for closure of account is marked as DEX-2 in the enquiry proceedings. The letter states that they have received the cash by mistake, that no one else is involved and that they are remitting the amount in full. The signature of the Animator and Helper Shanthi are seen in this. This document was put to MW4 who was the Branch Manager. When he was asked when he had received this, he had stated that he does not remember on account of tension. He has not stated that he has not received such a letter at the Bank. Thus it could be seen that a challan containing the signature of the concerned persons was given to the Bank for closure of the account and a letter by them seeking to close the account also was given at the Bank. So it could not be definitely stated that the petitioner himself is the one who remitted the amount. It is argued on behalf of the petitioner that if the petitioner has decided to remit the amount he would have remitted the amount to the account of the Velavan Group also and closed that account also. The evidence given by MW8 is that the loan proceeds were distributed among the members and they are now remitting instalments regularly.

27. Even assuming that the petitioner has chosen to close the account in view of all the allegations that had arisen against him, that by itself is no reason to conclude that he had committed the misconducts alleged against him. There is no allegation that he has misappropriated the entire amount. The misconduct alleged is that he had handed over the amount to the representatives of each Group taking Rs. 7,500/- from the amount due to Malligai Group and Rs. 9,500/- from the amount due to Velavan Group and also received Rs. 2,000/- and Rs. 3,000/- by way of illegal gratification from these Groups respectively. There cannot be an assumption of the commission of the misconducts on the basis of the remittance alone.

28. The method adopted by the Enquiry Officer for casting guilt on the petitioner is something unknown even for the proceedings in domestic enquiry. In the absence of direct evidence by the related witnesses he was relying upon the statements said to have been given by witnesses and the evidence given by MWs 1 and 2 with reference to these statements. Criminal misconduct is alleged against the petitioner. The charges against the petitioner are those that will invite serious consequences. So unless there is sufficient material to show the involvement of the petitioner, he shall not be nailed with the alleged misconduct. I find that the Enquiry Officer has given a report against the petitioner in the absence of such material. I find that the report of the Enquiry Officer and the punishment imposed on the petitioner based on the said report are without any justification. The petitioner is entitled to be reinstated in service.

29. The Respondent shall reinstate the petitioner in service with continuity of service and other benefits. The petitioner will be entitled to 25% of back wages from the date of dismissal to the date of publication of the award.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri B. Eswaramoorthy

For the 2nd Party/ Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	28.01.2010	Charge Sheet issued to Sri B. Eswaramoorthy
Ex.W2	05.03.2010	Letter from Zonal Office, Salem ordering departmental enquiry
Ex.W3	29.04.2010 19.05.2010 20.05.2010 04.06.2010	Proceedings of the departmental enquiry
Ex.W4	15.02.2010	Reply to the charge sheet by Sri B. Eswaramoorthy
Ex.W5	30.12.2009	Report by Sri S. Natarajan, Lead District Manager, Circle Office, Salem
Ex.W6	30.12.2009	Paper report of "Kalaikathir" and "Dinakaran"
Ex.W7	30.12.2009	Unsigned statement of Sri C. Selvaraj
Ex.W8	30.12.2009	Statement from R. Muthusamy, Asstt. Branch Manager, Konkanapuram
Ex.W9	30.12.2009	Letter from Mr. L. Sugavanam, Manager, Konkanapuram
Ex.W10	05.01.2010	Snap Inspection report of Sri L. Shanmugam, Inspector, Centre, Thanjavur
Ex.W11	04.01.2010	Statement from K. Vasanthi, Malligai SHG
Ex.W12	04.01.2010	Statement from Lakshmi, Malligai SHG
Ex.W13	04.01.2010	Statement from members of Malligai SHG
Ex.W14	04.01.2010	Statement from G. Shanthi, Samuthiram Village, Salem District
Ex.W15	05.01.2010	Statement from K. Indirani, Velavan SHG
Ex.W16	05.01.2010	Statement from members of Velavan SHG
Ex.W17	05.01.2010	Statement from M. Chandran, Tiny Deposit Agency, Indian Bank, Konganapuram
Ex.W18	-	Statement from S. Mariappan, Cashier, Indian Bank, Konganapuram
Ex.W19	09.01.2010	Letter from L. Sugavanam, Branch Manager to Circle Office, Salem
Ex.W20	24.11.2009	Credit Voucher of BPO favouring Shanthi Silk Hosue
Ex.W21	24.11.2009	BPO favouring Shanthi Silk House
Ex.W22	25.11.2009	Credit challan for A/c No. 566741615
Ex.W23	-	Statement of a/cs of Velavan SHG for the period from 01.11.2009 to 20.04.2010
Ex.W24	-	Statement of a/cs of Veelavan SHG for the period from 01.10.2009 to 20.04.2010
Ex.W25	29.10.2009	Credit voucher for SB A/c 566724429
Ex.W26	29.10.2009	Debit voucher for Malligai SHG
Ex.W27	29.10.2009	BPO favouring M/s Shanthi Silk House
Ex.W28	30.10.2009	Credit challan for SB A/c 566741615
Ex.W29	30.10.2009	Cheque no. 361995 favouring R. Ramesh
Ex.W30	31.10.2009	Cheque no. 361997 favouring R. Ramesh
Ex.W31	30.12.2009	Credit voucher of SB A/c 566670663
Ex.W32	30.12.2009	Credit voucher to SB A/c 506702606
Ex.W33	30.12.2009	Debit voucher of RIP A/c 804891680
Ex.W34	30.12.2009	Debit voucher of RIP 815011995

Ex.W35	14.11.2008	RIP Deposit receipt no. 804890680
Ex.W36	14.11.2008	RIP Deposit receipt no. 804891016
Ex.W37	30.12.2009	Withdrawal slip for Rs. 6,000
Ex.W38	30.12.2009	Withdrawal slip for Rs. 1,67,000
Ex.W39	30.12.2009	Withdrawal slip for Rs. 1,30,000
Ex.W40	30.12.2009	Credit challan of Malligai SHG
Ex.W41	14.11.2008	RIP Receipt no. 805011995
Ex.W42	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of Malligai SHG
Ex.W43	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of Malligai SHG Lakshmi and Vasanthi
Ex.W44	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of M. Chandran (LOD)
Ex.W45	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of M. Chandran (SB A/c)
Ex.W46	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of Shanthi Silk House
Ex.W47	-	Statement of a/c for the period from 01.10.2009 to 20.04.2010 of Shanthi Silk House
Ex.W48	-	Cash balance book for 30.12.2009
Ex.W49	-	List of transaction for 30.12.2009 (with timings)
Ex.W50	-	Teller Cashier register report for 30.12.2009 (relevant page 5/6)
Ex.W51	-	Malligai SHG loan application, sanction tickets
Ex.W52	-	Credit voucher for BPO favouring Shanthi Silk House
Ex.W53	-	Letter from Malligai SHG to Branch Manager, Konganapuram
Ex.W54	-	Presenting Officer's brief
Ex.W55	07.07.2010	Defence summing up
Ex.W56	23.08.2010	Enquiry Officer's findings
Ex.W57	09.09.2010	Comments on Enquiry Officer's findings
Ex.W58	11.11.2010	Second Show Cause Notice
Ex.W59	16.11.2010	Reply to the Second Show Cause Notice
Ex.W60	27.12.2010	Speaking orders of the DA
Ex.W61	18.01.2011	Appeal to the Appellate Authority
Ex.W62	08.02.2011	Supplementary appeal to the Appellate Authority
Ex.W63	10.05.2011	II Supplementary Appeal
Ex.W64	19.07.2011	III Supplementary Appeal
Ex.W65	09.07.2011	Speaking orders of the Appellate Authority
Ex.W66	16.08.2011	ID under Section 2(a) of ID Act

On the Management's side

Ex. No.	Date	Description
Ex.M1	20.11.2010	Additional submission of B. Eswaramoorthy (in Tamil)
Ex.M2	20.11.2010	Proceedings of personal hearing before Disciplinary Authority
Ex.M3	05.01.2011	Reply of Bank of ALC©, Chennai
Ex.M4	01.06.2011	Statement of a/c showing settlement of Gratuity
	10.09.2011	Rs. 3,52,950 credited to petitioner's SB A/c and Statement of A/c showing settlement of PF dues Rs. 4,51,050.30 – credited to petitioner's SB A/c
Ex.M5	27.03.2012	Conciliation failure report

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1374.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/49/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 44/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, which was received by the Central Government on 30-4-2014.

[No. L-12012/49/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, CHENNAI

Thursday, the 6th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 44/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN:

Sri K.B. Selvaraj	:	1st Party/ Petitioner
AND		
1. The Dy. General Manager/ Circle Head Appellate Authority Indian Bank Circle Office No. 100/101, East Avani Moola Street, Madurai	:	2nd Party/ 1st Respondent
2. The Assistant General Manager Disciplinary Authority Indian Bank Circle Office No. 100/101, East Avani Moola Street Madurai	:	2nd Party/ 2nd Respondent

Appearance :

For the 1st Party/ Petitioner	:	M/s S. Retnaswamy, Chidambara Natana Maharajan, Advocates
For the 1st Party/ 1st and 2nd Respondent	:	M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/49/2012-IR (B-II) dated 31.07.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Madurai Main Branch in imposing the punishment of compulsory retirement with superannuation benefits on Sri K.B. Selvaraj, Ex-Clerk-cum-Shroff vide order dated 13.02.2007, is legal and justified? What relief the workman concerned is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 44/2012 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The averments raised by the petitioner in the Claim Statement in brief are these:

The petitioner was appointed as sub-staff in the Respondent Bank in 1973. He had been working as Clerk-cum-Shroff in Madurai Main branch of the Bank, from the year 1996. While so, the petitioner had received a Charge Memo dated 30.01.2006 from the Second Respondent. In the Charge Memo it was alleged that in 11 sections of notes of Rs. 500/- denomination, counted and prepared by the petitioner on 14.10.2004 there was shortage of two pieces each, that the petitioner had intentionally removed two pieces from each of the sections causing shortage of Rs. 11,000/- and that the petitioner has misappropriated this amount of Rs. 11,000/-. It was further alleged that there was shortage of one piece of note in one section of Rs. 500/- denomination sorted and signed by the petitioner on 13.10.2004 and there was shortage of five pieces of notes in 5 sections of Rs. 500/- denomination sorted and signed by the petitioner on 14.08.2004 causing shortage to the extent of Rs. 13,000/- in all and thus the petitioner has misappropriated this amount. An enquiry was conducted against the petitioner and the petitioner was given the punishment of Compulsory Retirement with superannuation benefits, on the basis of the findings of the Enquiry Officer. Though the petitioner had preferred an appeal against the order, this was dismissed. The petitioner has not committed any misappropriation as alleged. The petitioner had remitted 50% of the alleged shortage in view of the RBI guidelines. It is the duty of the Officer concerned to recount the sections of notes counted by the Shroff and verify the correctness of the quantity of notes in the section. If a section is countersigned by the competent officer it is to be deemed that he recounted the section and verified the same. It is incorrect to state that the Officers had countersigned the sections without counting the same. There was possibility of loss of the notes at ICICI Bank where the sections were sent. This possibility was not considered during the enquiry. The charges alleged against the petitioner were not proved in the enquiry. The punishment imposed on the petitioner is illegal and unjustified. An order may be passed setting aside the order of punishment imposed on the petitioner and directing the Respondents to reinstate the petitioner in service with all back wages and other benefits.

4. The Respondents have filed Counter Statement contending as below:

By order dated 20.10.2004 the Reserve Bank of India had directed the Currency Chest Madurai attached to

Indian Bank to transfer Rs. 25.00 crores to the Currency Chest attached to ICICI Bank at Madurai. The Madurai Currency Chest of the Respondent Bank had sent the amount to ICICI Bank Currency Chest through its Potdar, Kutti Rajendran. On 29.10.2004 while the staff of ICICI Bank were counting the currency sent from Currency Chest of the Respondent Bank at Madurai in the presence of Kutti Rajendran, 11 sections of Rs. 500/- denomination were found short of two pieces in each section. It was also noticed that all these sections were counted by the petitioner on 14.10.2004. The sections with shortages were taken back to the Madurai Currency Chest and were replaced with sections with full number of pieces. The petitioner who had counted the sections and also Loganathan Balaji who countersigned the sections were asked to make good the loss and they had remitted Rs. 5,500/- each. After report of shortage of notes in the sections remitted to ICICI Bank, on the instructions of Assistant General Manager of Circle Office all sorted bundles of Rs. 500/- denomination at Madurai Currency Chest and were recounted. The recounting was done from 01.11.2004 to 09.11.2004 during which shortage of 29 pieces of Rs. 500/- denominations were noted. There were shortage of five notes in each of the five sections of Rs. 500/- denominations sorted and counted by the petitioner and countersigned by Mr. Bongar, the Manager on 14.08.2004. A show cause notice was issued to the petitioner for various shortages found on recounting. The explanation given by the petitioner was found not satisfactory and a charge sheet was issued to him with reference to the shortages. An enquiry was conducted in the matter and the Enquiry Officer had given a report holding that the charges are proved. After considering the representation of the petitioner, the Disciplinary Authority had passed orders awarding the petitioner with the punishment of Compulsory Retirement with superannuation benefits. The petitioner had reached the age of superannuation in July 2012. He had received all the benefits that were made available to him on Compulsory Retirement. The petitioner had filed Writ Petition before the Madras High Court challenging the punishment imposed, but had later withdrawn the Writ Petition. The action taken by the Respondent Bank in imposing the punishment of Compulsory Retirement is fully justified. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and the documents marked as Ext.W1 to Ext.W33 and Ext. M1 to Ext. M47.

6. The points for consideration are:

(i) Whether the management is justified in imposing the punishment of Compulsory Retirement on the petitioner?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. During the period of the alleged incident the petitioner was working as Clerk-cum-Shroff in the Madurai Main Branch of the Indian Bank. The bank is housed in the building situated at East Avani Moola Street Madurai. The branch of the Bank is functioning in the first floor while the ground floor of the building is occupied by the Currency Chest licensed by the Reserve Bank and attached to the Respondent Bank. The Currency Chest under the Respondent Bank at Madurai had transferred Rs. 25.00 crore to the Currency Chest of ICICI Bank at Madurai itself on the basis of the direction given by RBI on 20.10.2004. The counting of the amount sent by the Currency Chest under the Respondent Bank to the Currency Chest under the ICICI Bank was done on 29.10.2004 in the presence of the Potdar of the Respondent Bank through whom the amount was transferred. While counting it was noticed that 11 sections of Rs. 500/- denomination were short of two pieces each. All these sections were brought back to the Chest of the Respondent and were replaced by sections with full pieces. It was noticed by the Respondent Bank that all the 11 sections wherein shortages were occurred were sorted and counted by the petitioner on 14.10.2004. All the sections were countersigned by Loganathan Balaji. Both the petitioner and Loganathan Balaji were asked to make good the loss and they had remitted Rs. 5,500/- each to the Bank. Subsequently, all the sections of Rs. 500/- notes that were kept in the Currency Chest were recounted. During recounting it was noticed that apart from shortage of three pieces in the sections counted by two other Shroffs, there was shortage of five pieces each in five sections, all counted and sorted by the petitioner. The concerned Officers who had countersigned the sections seem to have maintained that they have not counted the sections before they countersigned them but were placing their faith on the petitioner who had counted the sections, for countersigning them. The bank had sought explanation from the petitioner which was found unsatisfactory and had proceeded to issue Charge Memo. An enquiry was conducted and the petitioner was found guilty of the charges. It was accordingly, the punishment of Compulsory Retirement was imposed on the petitioner.

8. The stand of the petitioner is that he was made a scapegoat for the alleged shortages. It is pointed out in the Claim Statement that the Officers who countersigned were not proceeded against for the alleged shortage. In fact the Bank had only recovered 50% of the shortage from these persons. It has accepted the explanation of these Officers that they were merely countersigning the sections believing the petitioner who did the counting.

9. The two Officers who countersigned the sections and also the employees who did the recounting after shortage was noticed in the sections sent to ICICI Currency

Chest as well the Potdar through whom the currency were transferred to ICICI Chest have given evidence before the Enquiry Officer. All these persons have been questioned during the investigation conducted by the Bank and their statements were recorded. The statements have been marked during the examination. The evidence given by these witnesses in the enquiry proceedings is that they stand by the statements given by them during investigation.

10. All the statements to the Vigilance Officer of the Bank and also the evidence of the witnesses before the Enquiry Officer are in Tamil. The translation of the statements and also depositions before the Enquiry Officer have been furnished by the Respondent. The Potdar through whom currency of Rs. 25.00 crores have been transferred to ICICI Bank had been examined as MW5. He is also seen examined as a defence witness by the petitioner. This witness has given statement to the Vigilance Officer that he had taken Rs. 25.00 crores in denomination of Rs. 500 to the ICICI Bank on 26.10.2004 They were all kept under lock and key in the chest of ICICI Bank and have been counted and kept in the bin room. 100 bundles which could not be counted on the day was put under lock and key and counted on the next day. Some shortage seems to have noticed on that day itself. However the paper bands of these were not traced. When counting was again begun on 29.10.2004 two pieces were found short in one section and shortage of two pieces were found in one more section. Then MW5 had contacted the person in-charge. On further counting shortage was noticed in more sections. Thus, shortage in eleven sections that were counted by the petitioner was detected. Each section was found short of two pieces thus totaling 22 pieces. Though this witness is examined on the petitioner's side also, no questions relevant to the incident are seen put to him. During the cross-examination while he was examined as MW5 also, no attempt has been made to make out that there were no shortage in the sections that were counted from the ICICI Bank Chest. Some attempt is seen made to show that when once a section is tied with twine and paper band, it would be possible to remove pieces from it.

11. Sri Loganathan Balaji, the Officer who countersigned the sections sent to ICICI Bank Chest is examined as MW2. This witness also has stated that he stands by the statement given by him to the Vigilance Officer. There are two statements by this Officer. He has stated that he was present at the counting on 14.10.2004. According to him he was going to the Bin Room whenever called by the person in-charge, Mr. Bongar, the Other Officer having gone for training. He had further stated that at the time of counting on 14.10.2004 the petitioner was sitting alone in the table placed in the corner. He was going to the Bin Room and counting hall from time to time. He has also stated that in some sections the paper bands were signed by him as such. This witness has been present at the time of recounting also. The recounting was commenced on 01.11.2004. There was no shortage or excess till 08.11.2004. They started counting the soiled bundles on 09.11.2004. Initially, MW1 who was one of the Shroffs counting the notes noticed shortage of one note in one section. This was made good by the concerned person who did the previous counting. Later when one more section was counted it was found short of 5 notes. MW2 also counted the section and confirmed that there is shortage of five notes. When they proceeded with the counting of other sections of soiled notes also, shortage was found in four more sections. On verification it was found that all these five sections were counted by the petitioner on 14.08.2004. During cross-examination this witness has stated that if one Officer who is working in the Currency Chest is not present the remaining two Officers will be sharing the work among themselves. It was also brought out through this witness that before he signs the sections of notes he is to count it and certify for the quantity.

12. MW3 is the other Officer who had countersigned sections in which shortage were found. On interrogation by the Vigilance Officer, his witness has stated that on recounting no shortage was found in the sections of issuable notes. But on counting the soiled notes on 09.10.2004, five pieces were found short in five sections with initials of himself and the petitioner. According to the witness, before the shortage was noticed the practice was that the Shroffs themselves will count each sections a second time and put them in front of the concerned officer with paper band and slip in them. According to MW3, he had signed the paper bands believing the Shroffs who counted them. This witness also seems to have remitted 50% of the shortage out of the sections containing his counter signature. According to this witness when the notes are tied using thread and paper band, it will not be possible to remove notes from them without damaging the wrapper. This witness has also deposed about the position of the petitioner at the time of counting. He was sitting in the seat behind a pillar. He has stated that all the shortages noticed were in the soiled sections. He revealed that if shortage is in issuable bundles it will come to light immediately. But in the case of soiled notes, it will be detected only after several days.

13. MW1 also had participated in the recounting. He was involved in the recounting on 4 days including 09.10.2004. He has detected shortage of one note each in two sections counted by the some other Shroffs other than the petitioner. On continuing the recounting he noticed shortage of five notes in one of the sections. He informed MW3 about it. On proceeding with the recounting he found shortage of five notes each in five sections altogether. He also noticed that all the sections were counted by the petitioner and countersigned by MW3. The statement of this witness regarding shortage

of notes found on recounting is not seen challenged during cross-examination.

14. MW6 is the Officer who was in joint custody of the Currency Chest alongwith another Officer. He has deposed that ICICI Currency Chest has reported about the shortage of notes in sections of notes of Rs. 500 denomination. He had also stated that as instructed by the Main Branch they had arranged for a recounting of all the sorted Rs. 500 bundles and it is accordingly recounting was done.

15. Even during the argument there is no case on behalf of the petitioner that shortage of notes were not found in the sections counted by the petitioner. Apparently, out of the sections sent to ICICI Bank Currency Chest, 11 sections of Rs. 500 denomination were each found short of two pieces. On recounting of the remaining sections of notes of Rs. 500 denomination in the currency chest of the Respondent Bank, five sections were found short of five pieces each. The paper bands on all these sections contained the signature of the petitioner as the one who did the counting. The sections sent to ICICI Currency Chest were countersigned by MW2 and the sections found short on recounting were countersigned by MW3.

16. The attempt that is being made on behalf of the petitioner is that merely because shortage was found in the sections, the offence of misconduct could not be attributed to the petitioner. According to the counsel, at the most the shortage might have occurred due to inadvertence or negligence at the time of counting. In this respect it has been pointed out by him that shortage was found in two other sections also at the time of recounting. One section counted by another Shroff was found short of one note and another section counted by still another Shroff also was found short of one note. The concerned Shroffs have immediately made good the loss by replacing the missing note. Referring to this, it has been argued by the counsel for the petitioner that shortage in the sections counted is not unusual and is bound to occur at times. The counsel has referred to the decision INSPECTOR PREM CHAND VS. GOVERNMENT OF NCT OF DELHI AND OTHERS reported in 2007 4 SCC 566 where it was held that error of judgment for negligence simplicitor could not be misconduct. The counsel has also referred to the decision UNION OF INDIA VS. J. AHMAD reported in 1979 2 SCC 286 where it was held that deficiencies in personal character or personal ability do not constitute misconduct for taking disciplinary proceedings. It was further held that negligence in performance of duty or inefficiency in discharge of duty are not commission or omission amounting to misconduct.

17. Certainly if the shortages noticed was the result of mere negligence or inadvertence it could not be termed misconduct which would invite action against the concerned person. However, on appreciating the evidence given by the Management witnesses, that of the petitioner himself and on considering the circumstances it could be seen that it is not a case where the petitioner could take shelter under the cover of negligence, inadvertence, inefficiency, etc. The evidence points to the fact that the notes were removed by the petitioner before he tied the bundles and wrapped them with paper bands. It is relevant to note that out of the sections that were sent to ICICI Chest, shortage was noticed only in the sections that were counted by the petitioner. Again, all the sections wherein shortage was noticed on recounting were sections of soiled notes. No shortage was noticed in the sections of issuable notes which were much more in number than the sections of soiled notes. The fact that there was no possibility of soiled notes being counted immediately makes it probable that the petitioner had decided to remove notes from the sections of soiled notes. On recounting, shortage of five notes were noticed in each of the five sections of soiled notes. There is the evidence given by MW2 that only two Officers including him were present on 14.10.2004 when notes to be sent to the ICICI Bank Chest were counted and that he had to run to different places on the day to perform his duty in the absence of one of the Officers. The evidence given by the petitioner himself is also relevant in this respect. He had admitted to have worked on 14.08.2004, 13.10.2004 and on 14.10.2004. Shortages were noticed in the notes counted by the petitioner on these dates. The statement of the petitioner had been recorded and were marked also. He has stated on interrogation that he does not know how shortage occurred. He has admitted that he had tied the sections with thread and paper band. He admitted that the Sub-Staff are not allowed to help in the counting. He has stated during interrogation that on 14.10.2004, he had sorted notes of Rs. 500/- denomination and there were sixteen re-issuable sections and four soiled sections. After sorting he had verified all the sections and had counted them in the counting machine. According to him, MW2 was watching him at the time. He had asked MW2 if he can put the wrapper on the sections and MW2 had permitted him to do so. Then he had brought all the sections to his table and had put the wrapper on them. Then he had signed on them and had placed the sections on the table of MW2. Thus, it is clear from the version of the petitioner itself that MW2 did not count the sections. Certainly, this was dereliction of duty on the part of MW2. But at the same time it would show that he had no part in the shortage of notes. After the sections were placed before MW2, the petitioner had again taken them to his own table for wrapping them. At this instance, the evidence given by MW3 regarding the position of the petitioner is relevant. He was using a seat behind the pillar which probably gave sufficient cover to him and it would not have been possible for others to watch him at this place.

18. More than anything the fact that shortage out of the sections sent to ICICI Currency Chest was noticed

only in the sections counted by the petitioner speaks much against the petitioner. So also shortage to the extent of five notes in each of the sections on recounting were noticed only in the sections counted by the petitioner. Shortage noticed in two other sections was only one piece each and that also in sections counted by two different persons. In the case of sections in which shortages were noticed on counting at ICICI Bank Chest, each of the eleven sections counted by the petitioner were short of two pieces. So also five sections of soiled notes wherein shortage was noticed on recounting were all counted by the petitioner on a single day and from each of these five pieces were missing. If the shortage was due to inadvertence it is not likely that the same number of pieces were missing from all the sections. Again, the shortage noticed was all in sections of soiled notes. So far as soiled notes are concerned, there is probably likelihood of excess in a section since the notes might have become sticky out of constant use. Shortage in soiled sections is almost impossible. When these aspects are taken into account, the argument advanced on behalf of the petitioner that the shortage might have been the result of negligence or inadvertence is to be ruled out. The only probability is that it is the deliberate act on the part of the person who did the counting.

19. Referring to the decision ANIL KUMAR VS. PRESIDING OFFICERS AND OTHERS reported in 1985 3 SLR 26 the counsel for the petitioner has argued that termination from service based on an enquiry report which does not discuss evidence properly is not legal. The counsel has referred to the enquiry report in the present case and has argued that the Enquiry Officer has not assimilated or appreciated the evidence properly or discussed the case referring to all the aspects. Even assuming that this argument of the counsel is correct, it is no reason for this Tribunal not to take a decision based on the material that is available. This Tribunal is expected to go through the enquiry proceedings, assess the evidence and find out if the charge against the delinquent is established or not. From the discussion above, it is very much clear that the Management has established both charges framed against the petitioner. So there is no necessity to interfere with the report of finding of guilt against the petitioner.

20. The next question to be considered is whether the punishment imposed is proportionate to the gravity of the offence committed. The petitioner was given the punishment of Compulsory retirement from service only. Now he has already attained the age of superannuation. It is a case where shortage was found in a series of sections of notes counted by the petitioner. I have found that this could not have been mere negligence or inadvertence. The Management could not be expected to retain persons whose act is against their interest. The punishment given to the petitioner is the least that could have been given so I do not propose to interfere with the punishment imposed also. The points are found against the petitioner.

21. In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 6th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri K.B. Selvaraj

For the 2nd Party/ 1st Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	13.11.2004	Placing under Suspension
Ex.W2	19.11.2004	Reply by the petitioner
Ex.W3	08.12.2004	Seeking explanation
Ex.W4	13.12.2004	Advice to remit 50% of shortage
Ex.W5	22.12.2004	Reminder to submit explanation
Ex.W6	27.12.2004	Forwarding letter
Ex.W7	01.01.2005	Extension of time to submit explanation
Ex.W8	12.01.2005	Reply
Ex.W9	09.07.2005	Representation of Sri V.R. Chidambaram
Ex.W10	17.11.2005	Advise to remit 50% of shortage
Ex.W11	30.01.2006	Charge Sheet
Ex.W12	23.05.2006	Intimation to attend enquiry on 06.06.2006
Ex.W13	Nil	Proceedings of enquiry on 06.06.2006
Ex.W14	29.06.2006	Intimation to attend enquiry on 08.07.2006
Ex.W15	08.07.2006	Proceedings of enquiry on 08.07.2006
Ex.W16	07.10.2006	Report of Presenting Officer
Ex.W17	14.12.2006	Defence Representative's submission to EO
Ex.W18	26.02.2007	Reply to Show Cause Notice
Ex.W19	Nil	Enquiry Officer's finding

Ex.W20	13.02.2007	Show Cause Notice
Ex.W21	28.02.2007	Order of Disciplinary Authority – Compulsory Retirement
Ex.W22	12.04.2007	Appeal against the order of Disciplinary Authority
Ex.W23	19.09.2011	Order on WP (MD) No. 10305 of 2007 – Madurai Bench of Madras High Court
Ex.W24	12.01.2012	Industrial Dispute between the Management of Indian Bank & the Petitioner
Ex.W25	28.02.2012	Intimation to attend Conciliation Proceedings on 13.03.2012
Ex.W26	30.04.2012	Report on failure of Conciliation
Ex.W27	12.08.2006	Proceedings on regular departmental enquiry held on 12.08.2006
Ex.W28	19.11.2004	Statement of enquiry held on 19.11.2004
Ex.W29	07.09.2006	Proceedings on regular departmental enquiry held on 07.09.2006
Ex.W30	09.11.2004	Statement of recounted sections during the period 01.11.2004 to 09.11.2004
Ex.W31	09.11.2004	Statement of enquiry held on 09.11.2004
Ex.W32	10.11.2004	Statement of enquiry held on 10.11.2004
Ex.W33	29.08.2003	RBI Clean Note Policy

On the Management's side

Ex.No.	Date	Description
Ex.M1	20.10.2004	Order No. 92 – RBI Clean Currency Chest to Indian Bank, Madurai to Transfer 25 crores to Currency Chest of ICICI Bank at North Chitrai Street, Madurai – in Rs. 500/- denomination
Ex.M2	-	Note from Indian Bank, Circle Office, Madurai – reg. shortage of notes in Rs. 500/- denomination sections in Madurai Currency Chest
Ex.M3	30.10.2004	Memo to K.B. Selvaraj, regarding shortage of 25 pieces of Rs. 500/- denominations to make good and calling for explanation for this shortage
Ex.M4	30.10.2004	Memo to Loganathan Balaji regarding shortage of 25 pieces of Rs. 500/- denominations to make good and calling for explanation for this shortage
Ex.M5	01.11.2004	Letter from Currency Chest Madurai to AGM/CO, Madurai
Ex.M6	12.11.2004	Investigation Report of R. Nagarajan (Sr. Mgr.) to R. Balakrishnan (Sr. Manager)
Ex.M7	09.11.2004	Statement of Loganathan Balaji on interrogation by M/s Nagarajan and Balakrishnan – (3 Sheets)
Ex.M8	09.11.2004	Statement of R.Kutty Rajendran during interrogation by M/s. Nagarajan and Balakrishnan (3 Sheets)
Ex.M9	10.11.2004	Statement of K.B.Selvaraj on interrogation by Nagarajan and Balakrishnan (4 Sheets)
Ex.M10	29.10.2004	ICICI Bank – Currency Chest Madurai letter dated 29.10.2004 addressed to Chief Manager, Madurai
Ex.M11	14.10.2004	Denomination slips dated 14.10.2004 signed by K.B. Selvaraj and countersigned by Loganathan Balaji-11-Nos. (4 Sheets)
Ex.M12	26.10.2004	Coin / Note Examiners Certificate
Ex.M13	26.10.2004	Details of Cash Remittance from– Currency Chest-Madurai to ICICI Bank with its enclosures of packing details – Box Slips in – 3 Sheets
Ex.M14	14.10.2004	Counting Hall Folio dated 14.10.2004
Ex.M15	04.12.2004	Further report of R. Nagarajan and K.R. Balakrishnan to AGM on further shortage of 22 pieces of Rs.500/- denomination
Ex.M16	19.11.2004	Statement of P.Gnanamuthu
Ex.M17	19.11.2004	Statement of Anbazhagan
Ex.M18	20.11.2004	Statement of Kutty Rajendran
Ex.M19	20.11.2004	Statement of K.B.Selvaraj
Ex.M20	22.11.2004	Statement of G.Vetrisingam
Ex.M21	24.11.2004	Statement of K. Elango
Ex.M22	24.11.2004	Statement of C. Ukkirapandiyan

Ex.M23	22.11.2004	Statement of Loganathan Balaji
Ex.M24	23.11.2004	Statement of V. Bonger
Ex.M25	23.11.2004	Statement of S. Muralidharan
Ex.M26	14.08.2004	Denomination Slip dated 14.08.2004 signed by K.B.Selvaraj- 4 Nos.
Ex.M27	08.09.2004	Denomination Slip dated 08.09.2004 signed by G.Vetrisingam
Ex.M28	13.10.2004	Denomination Slip dated 13.10.2004 signed by K.B.Selvaraj
Ex.M29	14.08.2004	Counting Hall Register dated 14.08.2004
Ex.M30	08.09.2004	Counting Hall Register dated 08.09.2004
Ex.M31	13.10.2004	Counting Hall Register dated 13.10.2004
Ex.M32	09.11.2004	Record of re-counting done from 01.11.2004 to 09.11.2004 (2 Sheets)
Ex.M33	10.11.2004	Memo to K.B. Selvaraj on shortage of 267 pieces of Rs. 500/- denomination to make good and to submit explanation.
Ex.M34	10.11.2004	Letter from Madurai Main Branch to AGM / C.O./Madurai
Ex.M35	29.10.2004	SR. No. 5- Copy of Voucher for Rs. 11,000/-
Ex.M36	01.11.2004	S.R.5.- Copy of Voucher – cash remittance of Rs.5,500/- by K.B.Selvaraj- being 50% of cash shortage
Ex.M37	01.11.2004	S.R.5.- Copy of Voucher – cash remittance of Rs.5,500/- by Loganathan Balaji - being 50% of cash shortage
Ex.M38	10.04.2004	Madurai Main S.R.No.5 – debit voucher dated 10.11.2004 for Rs. 13,000/-
Ex.M39	18.11.2004	Madurai Main S.R.No.5 – credit voucher for Rs. 250/- remitted by Loganathan Balaji
Ex.M40	18.11.2004	Madurai Main S.R.No.5 – credit voucher for Rs. 6,250/- remitted by Bongar
Ex.M41	08.08.2007	Letter from Madurai Main Branch to K.B.Selvaraj to offering P.F. and Gratuity Settlement payments
Ex.M42	12.11.2008	Letter from K.B.Selvaraj to Chief Manager, Madurai expressing willingness to accept the terminal benefits.
Ex.M43	08.09.2009	Settlement of Gratuity - Gratuity Receipt by Selvaraj – Rs. 2,34,701/ - and statement of account of petitioner
Ex.M44	15.09.2009	Settlement of P.F. Receipt – by Selvaraj – Rs. 3,85,289/-
Ex.M45	29.08.2011	Counter of Bank in W.P. No. 10305 of 2007
Ex.M46	08.08.2006	Order of AGM / DA on charge sheet dated 24.04.2006 issued to Loganathan Balaji, Assistant Manager – penalty imposed "CENSURE"
Ex.M47	Dec..2011	2A Petition filed by Petitioner before ALC (Central), Madurai.

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1375.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 31/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/94/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12012/94/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT

CHENNAI

Friday, the 7th March, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 31/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman]

BETWEEN

Sri S. Nandakumar : 1st Party/Petitioner

AND

1. The General Manager/ Appellate Authority Indian Bank, Head Office/ HRM Deptt. No. 66, Rajaji Salai, Chennai-600001 : 2nd Party/ 1st Respondent
2. The Asstt. General Manager/ Disciplinary Authority, Indian Bank, Circle Office No. 510-511, Gandhi Road Kanchipuram-631501 : 2nd Party/2nd Respondent
3. The Branch Manager Indian Bank, Valasaravakkam Branch Chennai-600087 : 2nd Party/3rd Respondent

Appearance :

For the 1st Party/ Petitioner : Sri P. Manikandan, Advocate

For the 2nd Party/1st, 2nd & 3rd Management : M/s T.S. Gopalan & Co., Advocate

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/94/2011-IR (B-II) dated 23.05.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Chennai in imposing the punishment of compulsory retirement from the service of the bank and of stoppage of increment for a period of six months upon Sri S. Nandakumar, Ex-Peon *vide* Order dated 31.12.2009 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 31/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined as Peon in the Indian Bank in November, 1984. While the petitioner was working at Valsaravakkam Branch he had received a Show-Cause Notice dated 16.07.2008 issued by the Respondent. The petitioner had submitted explanation denying the allegations made against him. In spite of the explanation, an enquiry was conducted against the petitioner. The Enquiry Officer had given a report holding that the charges against the petitioner are proved. Consequently, the punishment of Compulsory Retirement with superannuation benefits was imposed on the petitioner. Though the petitioner had preferred an appeal against the order of the Disciplinary Authority, this was dismissed. The petitioner denies all the charges leveled against him in the charge sheet served on him. It is incorrect to state that the petitioner was absent from duty without prior sanction for 64 days during the period from 12.04.2006 to 13.08.2008. The petitioner had submitted leave applications to the concerned Branch Manager. In cases of taking leave on emergency he had informed the Manager through phone also. The charge that the petitioner has instigated the customers present in the Bank on 05.04.2008 to prefer complaints against the Branch Management also is not true. So also, the charge that the petitioner had refused to carry the cash box for loading cash in the ATM of the branch also is incorrect. The punishment imposed on the petitioern is without any justification. An order may be passed holding that the punishment is unjust and illegal and also directing the Respondents to reinstate the petitioner in service with backwages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows :

As all the three Respondents represent the Indian Bank they are collectively referred to as the "Respondent". A common counter statement is filed on behalf of the three Respondents. The petitioner was appointed as a Peon and posted to Mannady Branch of the Respondent on 29.11.1984. Within two years of his joining the post there was complaint of his having misbehaved with a woman employee and an action was initiated against him. He was transferred and posted to Valsaravakkam branch in view of the complaint. Subordinate staff are governed by single scale of pay. A Special Allowance is paid to them depending upon the nature of work assigned to them. Whenever a Peon is called upon to work in the Cash Department, he would be paid Cash Peon allowance. The Cash Peon shall be required to stitch and bundle currencies and carry the cash box to the Currency Chest or to ATM. The Award Staff of the bank including Subordinate Staff are granted all leave benefits. So they would be able to arrange their affairs without any necessity to unscheduled absenteeism or unauthorized absence. At Valsaravakkam branch the petitioner was very irregular in attending his work. He used to be absent without applying for leave. Between August, 2006 and September, 2007 he had unauthorizedly absented from duty for 44 days. Memos were issued to him on 27.05.2007 and 29.09.2007, for unauthorized absence. On 15.05.2008, when the Asstt. Manager, Sriram asked the petitioner to bundle sections of currency notes for remittance to the Currency Chest, he refused to carry out the instructions. On 23.05.2008, he had refused to obey the instruction of Assistant Branch

Manager to fasten the sections of the currency notes. Memos were issued to the petitioner on account of these. Between 16.08.2006 and 12.08.2008, the petitioner was unauthorizedly absent for 64 days on 38 occasions. On 30.05.2008 the petitioner had refused to carry the cash box for loading the cash in the ATM stating that it is not his job. On 05.04.2008 he called some customers who had come to the branch premises to make a complaint to the Head Office about the reduction in the number of single window operators. A Show-Cause Notice was issued to the petitioner listing out his acts of misconduct. The reply given by the petitioner to this was unsatisfactory. A charge sheet was issued to him and he was asked to appear for the enquiry. On the basis of the report of the Enquiry Officer, punishment of Compulsory Retirement for charges 2 and 3 and stoppage of increment for Charge No. 1 was imposed on the petitioner. Even after issue of the Cause Notice on 16.07.2008, the petitioner was unauthorizedly absent for 28 days. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Ext.W1 to Ext.W22 and Ext. M1 to Ext. M29.

6. The points for consideration are:

(i) Whether the management is justified in imposing the punishment of Compulsory Retirement and stoppage of increment on the petitioner?

(ii) What is the relief to which the petitioner is entitled to?

The Points

7. The petitioner had joined the service of the Respondent Bank in the year 1984. His first posting was at Mannady branch. It is alleged by the Respondent that it is consequent to his misbehavior with a woman employee the petitioner was transferred to Valsaravakkam branch. Though, documents are not produced by the Respondent to substantiate this case, the admission made by the petitioner during the cross-examination before this Court would show that there was a complaint against him by a woman employee. The petitioner had stated during the cross-examination that the complaint was that he had obstructed the way of the complainant and it is accordingly he was transferred to Valsaravakkam branch.

8. There is no case for the petitioner that the proceedings of enquiry against him was not conducted in a fair and proper manner. The documents pertaining to the enquiry are marked before this Tribunal. It is on the basis of these documents, the petitioner is trying to advance his case that the charges leveled against him by the Respondent are without any basis.

9. The charges against the petitioner are three fold. The first charge against the petitioner is that he had been absent from duty without any prior sanction or information for 64 days on 28 occasions during the period between 12.04.2006 and 13.08.2008 and that in spite of repeated directions he had failed to submit leave applications. The details of the absence without leave applications are also given in the charge memo which is marked as Ext.W5. The second charge against the petitioner is that he had instigated the customers available at the banking hall on 05.04.2008 to prefer complaints against the branch. The third charge is that though the Assistant Manager and the Senior Manager instructed to carry the cash box for loading cash in the branch's ATM on 30.05.2008 and on 01.06.2008, he had refused to carry out the instructions. The acts of the petitioner are described as misconducts coming under Clause-7(b), 5(e) and 5(j) of the Memorandum of Settlement dated 10.04.2002.

10. Most of the enquiry proceedings having been in Tamil, a translation of the relevant portions have been furnished to me. The Management had examined the then Assistant Manager of Valsaravakkam branch as MW1. MW2 also is the Assistant Manager of the branch.

11. The first charge is attempted to be proved through MW1. The relevant Attendance Registers were marked through this witness. In this respect, it is to be mentioned that there is no case for the petitioner that he was not absent on the dates referred to in the charge. His only case is that on most of the days he had submitted leave applications and on other dates on which he had taken leave on emergency he had informed the Branch Manager through phone. The Enquiry Officer has noticed that the petitioner was absent from duty without prior permission for 37 days. Regarding absence on other days he has found that permission has been obtained. The particulars of sanction of leave are also given in the enquiry report. Though the petitioner has stated that he was obtaining prior permission through phone this is not substantiated. In the normal course, a person who is availing leave is expected to obtain prior permission from his superior officer. Though it is the case of the petitioner that he has obtained prior permission through phone, he has not given any evidence in the enquiry proceedings. So there is no reason to reject the finding of the Enquiry Officer that he was absent from duty for 37 days without prior permission.

12. The second charge against the petitioner is that he instigated the customers to give complaint against the bank. There is the evidence given by MW1 regarding this. She has deposed that a letter (Ext.M2) was issued to the petitioner on account of this conduct. MW1 was present at the time of the incident. She has deposed that on 05.04.2008, some of the employees were on leave and only three single window counters were functioning. Several customers had assembled at the hall and were making noise. The petitioner had told the customers to make complaint to the Manager that there were only three

single window counters where there should have been four. MW1 had told him not to instigate the customers. The petitioner reported that she has no right to instruct him so. She saw him handing over a paper to one of the customers to make a complaint in the matter. MW1 had been cross-examined by the petitioner. During cross-examination further details regarding the conduct of the petitioner is revealed. MW1 has stated that when the petitioner told her that she has no right to question him, the Assistant Manager who was coming out from the systems room had told him that she has got every right to give such instruction to him. She has stated that as an Officer of the bank to maintain the image of the bank and since the Manager and the Assistant Manager were doing their duty in their rooms and she was only person who was present in the hall, she had tried to dissuade the petitioner from resorting to such misconduct.

13. When the evidence of MW1 is taken into account, it could be seen that there is no reason to disbelieve her version. As could be seen, immediately after the incident, the petitioner was served with a memo in the form of a letter. It is unlikely that such a charge would have been raised by the Management if not for the conduct of the petitioner on the occasion, The petitioner is also a staff of the bank, is a part of the establishment and is expected to keep the reputation of the establishment intact. Rather than trying to pacify the customers who have become impatient on account of the reduced number of single window counters in the absence of some of the employees, the petitioner had been trying to instigate them to make a complaint against the bank. Such conduct of the petitioner was certainly not befitting that of a disciplined and sincere employee of the bank. There is no reason to interfere with the finding of Charge No. 2 against the petitioner also.

14. The third and most severe charge against the petitioner is that he defied the instructions given by the superior officers to carry cash box to the ATM counter close by. Both MW1 as well as MW2 had given evidence about this. MW1 has stated that on 01.06.2008 she had requested the Assistant Branch Manager, Sriram to spare a Peon for taking cash box to the ATM and he had told her to take the petitioner with her. Accordingly, she had asked the petitioner to accompany her to the ATM. However, the petitioner had refused stating that it was not his duty. She had informed this to the Assistant Branch Manager and he too had directed the petitioner to accompany her to the ATM. In spite of this, he refused to go along with her.

15. MW2 who was the Assistant Manager of the branch has spoken about the incident on 30.05.2008. On this day, she had requested the Assistant Branch Manager to provide a Peon for taking cash box to the ATM. He asked her to take the petitioner along with her and she duly told the petitioner to carry the cash box at 1500 hrs. But he refused to obey the instructions stating that it is not his duty. She reported this to the Assistant Branch Manager, Sriram and he too instructed him to carry the cash box. Still the petitioner refused stating that it is not his duty.

16. MW2 has stated during her cross-examination that the concerned ATM is located only three buildings from the branch. They used to carry money to the ATM by an auto-rickshaw. For remittance of cash they used to hire taxi. The petitioner had questioned MW2 for not using a taxi to carry money to the ATM counter. She has stated that since the ATM counter is closeby they were using the auto-rickshaw. An Officer, one Clerk and one Peon, all will be traveling in the same auto-rickshaw along with the cash box.

17. A perusal of the evidence of MWs 1 and 2 would show that there is no reason to disbelieve the evidences of these witnesses regarding the refusal of the petitioner to carry the cash box. Memos were served on the petitioner on the relevant dates for the misconduct. Apart from this, there is the admission made by the petitioner himself in this respect before this Tribunal. He has stated during his cross-examination that his objection in carrying the cash box was that he had to walk all the distance since a vehicle was not provided. He then stated that even now he is not prepared to carry the box by walking. Even as admitted by him, the distance between the Valsaravakkam branch of the bank and the ATM Centre is a little more than 100 feet. According to him, it would not be safe to walk with the cash box. For one thing, as seen from the evidence of MW2, cash used to be taken to the ATM counter by a vehicle so there was no question of the petitioner walking, carrying the cash box. Even assuming that he had to carry the box he would have been bound to do it when the nature of his duty is taken into account. It is not the case of the petitioner that he refused to carry the box because of its overweight. Risk is part of one's job and if the job of the petitioner required carrying cash box he was bound to do it in spite of the risk. A subordinate staff who is working as Cash Peon is entitled to Special Pay. It is considering the nature of his duty, this additional payment is being made. The petitioner had no justification at all in refusing to carry the cash box. It was part of his duty and he was bound to do it. The Enquiry Officer was fully justified in entering a finding against the petitioner on Charge No. 3 also.

18. Now the question is whether the punishment imposed on the petitioner is disproportionate to the nature of offence committed by him. So far as the first charge is concerned, stoppage of increment was the punishment imposed. Certainly, there was no necessity for such a punishment when the punishment of compulsory retirement was being imposed on the petitioner under Charges 2 and 3. The refusal of the petitioner to obey the superior officers by carrying the cash box seems to be more severe

misconduct on his part. As already stated even now he is asserting that he is not willing to carry the cash box which actually is a part of his duty. With such a person who gives least consideration for his duty, it would be difficult to conduct the business of the bank so it is not proper to reinstate him in service. Compulsory retirement is the befitting punishment for the petitioner. I do not propose to interfere with the punishment also.

19. In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri S. Nanda Kumar

For the 2nd Party/1st, 2nd & 3rd Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	29.11.1984	Appointment order
Ex.W2	08.06.2003	Merit Certificate
Ex.W3	16.07.2008	Show-Cause Notice issued by the 2nd Respondent
Ex.W4	09.08.2008	Reply representation
Ex.W5	30.06.2009	Charge Memo
Ex.W6	21.07.2009	Notice issued by Enquiry Officer
Ex.W7	22.08.2009	Report submitted by Presenting Officer
Ex.W8	14.09.2009	Explanation submitted by petitioner
Ex.W9	03.10.2009	Report submitted by Enquiry Officer
Ex.W10	28.11.2009	Explanation submitted by petitioner
Ex.W11	19.12.2009	Show-Cause Notice issued by 2nd Respondent for proposed punishment
Ex.W12	28.12.2009	Objection letter made by the petitioner
Ex.W13	31.12.2009	Order passed by 2nd Respondent
Ex.W14	-	Leave sanction application
Ex.W15	-	Wages slip series
Ex.W16	27.01.2010	Appeal filed by petitioner
Ex.W17	11.06.2010	Order made in WP 11827/2010
Ex.W18	13.08.2010	Order passed by General Manager/ Appellate Authority
Ex.W19	9/2010	Petition filed under Section 2A of the ID Act before Conciliation Officer
Ex.W20	08.12.2010	Reply from the Zonal Office, Indian Bank
Ex.W21	22.12.2010	Rejoinder Statements filed by the petitioner
Ex.W22	15.06.2011	Failure report

On the Management's side

Ex.No.	Date	Description
Ex.M1	27.05.2007	Letter issued to petitioner
Ex.M2	06.04.2008	Letter (memo) issued to petitioner
Ex.M3	07.04.2008	Letter from petitioner requesting Tamil version of 06.04.2008 memo
Ex.M4	15.05.2008	Letter (memo) issued to petitioner
Ex.M5	29.05.2008	Letter from Petitioner calling for Tamil version of 15.05.2008 letter
Ex.M6	23.05.2008	Memo issued to petitioner
Ex.M7	07.06.2008	Petitioner's letter asking for Tamil version
Ex.M8	30.05.2008	Memo for refusing to bring cash box
Ex.M9	-	Management furnishing of Tamil version of memo dated 16.07.2008
Ex.M10	30.07.2008	Letter from AGM – Kancheepuram to petitioner
Ex.M11	14.07.2009	Letter from Enquiry Officer to petitioner
Ex.M12	20.07.2009	Letter from Enquiry Officer to petitioner
Ex.M13	31.07.2009 & 01.08.2009	Proceedings of enquiry
Ex.M14	12.06.2007	Letter from Valsaravakkam branch to petitioner
Ex.M15	06.04.2008	Letter from Valsaravakkam branch to petitioner
Ex.M16	23.04.2008	Letter from Valsaravakkam branch addressed to CO, Kancheepuram
Ex.M17	30.05.2008	Letter from Valsaravakkam branch to petitioner

Ex.M18	01.06.2008	Letter from Valsaravakkam branch to petitioner
Ex.M19	28.11.2008	Letter from Valsaravakkam branch to CEO, Kancheepuram
Ex.M20	-	Copy of Attendance Register for September 2006
Ex.M21	-	Copy of Attendance Register for April 2007
Ex.M22	-	Copy of Attendance Register for May 2007
Ex.W23	-	Copy of Attendance Register for June 2007
Ex.W24	-	Copy of Attendance Register for July 2007
Ex.W25	-	Copy of Attendance Register for May 2008
Ex.W26	-	Copy of Attendance Register for June 2008
Ex.W27	-	Copy of Attendance Register for July 2008
Ex.W28	-	Copy of Attendance Register for August 2008
Ex.W29	-	Proceedings of personal hearing before the Disciplinary

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1376.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 72/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/113/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 72/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12011/113/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, CHENNAI

Tuesday, the 4th March, 2014

Present : K. P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No. 72/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN

The General Secretary
Indian Bank Employees Union
No. 6, Moore Street,
Mannady Corner
Chennai-600001 : 1st Party/Petitioner Union

AND

The Zonal Manager
Indian Bank
Corporate Office
Avvai Shanmugam Salai
Chennai-600014 : 2nd Party/ Respondent

Appearance:

For the 1st Party/ Petitioner Union : Sri J. Thomas Jeyaprabhakaran, Authorized Representative

For the 1st Party/ Respondent : M/s. T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/113/2011-IR (B-II) dated 12.09.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank in reducing the salary and recovering the alleged excess salary paid to Sri R. Palaniyandi, SR No. 56994, C/SH, CDPC, Chennai and stoppage of special increments is legal and justified? If not, what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 72/2012 and issued notice to both sides. The petitioner appeared through authorized representative and the respondent through its counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are these:

The petitioner is a recognized Trade Union and is represented by its General Secretary. Palaniyandi, a member of the Petitioner Union who was working as Sub-Staff in the Respondent Bank had passed M.A (History) Examination conducted by the Annamalai University during May 1998 under the Open University System. In terms of the promotion policy settlement signed between the Federation of Indian Bank Employees' Union and Bank Management, sub-staff members are eligible to be promoted as Clerks on completion of their graduation or post-graduation. Accordingly, Palaniyandi was promoted as Clerk on 25.08.1999. Initially he was posted to Neyveli Block-17 branch, but was subsequently transferred to CDPC Chennai at his request. In the Bipartite Settlement dated 27.04.2010, two additional increments were provided for, for graduation. It was further provided that for those who acquire post graduation qualification without being a graduate also two additional increments will be granted subject to the conditions that the employees who are registered under the post-graduation courses of Open University have either passed the foundation/entrance course or attended the Bachelor's Preparatory Programme and they pursued the same course and take the same examination as the formal stream students. Palaniyandi was admitted to Masters Degree Course after duly completing the entrance course for two weeks by attending the preparatory course classes held at the University Campus and thereafter passing the entrance test conducted by the University. Palaniyandi had passed MA Degree Examination held in May 1998 in 2nd class. Thereafter on his request to the Circle Office two additional increments were sanctioned to Palaniyandi w.e.f. 01.05.2010. He had given a representation requesting to sanction the increments with retrospective effect since he had been promoted on 25.08.1999 after passing MA Degree in May 1998. While awaiting the reply to the representation he was served with a communication stating that he had not fulfilled the conditions as stipulated in the Bipartite Settlement and is not eligible for special increments. The Head Office had directed to cancel the increments already sanctioned and to recover the excess salary paid. The action of the Respondent is not justified since Palaniyandi had undergone the entrance course held at the University and was admitted to the MA Degree only after passing entrance test. In any case, the Respondent was not justified in directing to recover the amount already received by Palaniyandi consequent to sanction of two special increments to him. An order may be passed holding that the action of the Management in reducing the salary and recovering the salary already paid to Palaniyandi is illegal and unjustified and also directing the Respondent to desist from recovering any amount as excess amount and to return the excess amount already recovered and to re-fix his wages by granting two additional increments with retrospective effect from 02.06.2005.

4. The Respondent has filed Counter Statement contending as follows:

By the 8th Bipartite Settlement dated 02.06.2005 it was provided that a non-subordinate employee who acquires graduation/post graduation qualification from Universities/Open universities which are recognized by the University Grants Commission will be considered as having acquired graduate qualification and will be eligible for two additional increments for graduation subject to the conditions that employees who register under Graduation /Post-Graduation Courses of Open University have either passed the foundation / entrance course or attended the Bachelor' Preparatory Programme and pursued the same course and had taken the same examination as the formal stream students w.e.f. 02.06.2005. This was later modified by which Post Graduates who acquired qualification without being a graduate will be granted two additional increments for graduation subject to the condition that the employee who have registered under the Post Graduate Courses of Open University have passed the foundation / entrance course or attended the Bachelor's Preparatory Programme and pursued the same course and have taken the same examination as the formal stream students. Palaniyandi had directly acquired Masters Degree in History from Annamalai University in May 1998. He made a representation that he had satisfied the stipulations for grant of two increments. Based on this, declaration on its face value, increments were sanctioned to him. Later, on reference made to the Annamalai University it was revealed that Palaniyandi had not attended and passed the foundation / entrance course or attended the Bachelor's Preparatory Programme. Consequently, the grant of additional increments was withdrawn w.e.f. August 2001. As the increment earlier granted was on the basis of mis-representation the amount paid was proposed to be recovered. The petitioner is not entitled to any relief.

5. The evidence in the case consists of documents marked as Ext.W1 to Ext.W12 and Ext.M1 to Ext.M9. No oral evidence was adduced by either side.

6. The points for consideration are :

(i) Whether the Respondent is justified in reducing the salary and recovering the excess salary paid to Palaniyandi and in cancelling the two special increments granted to him?

(ii) What is the relief to which Palaniyandi is entitled?

The Points

7. Palaniyandi, a member of the Petitioner Union was working as Sub-Staff with the Respondent. He had acquired Post Graduate qualification from Annamalai University in the examination held in May 1998 without being a Graduate. As per the Bipartite Settlement dated 27.04.2010 entered into between the Employees' Federation and the Respondent, employees who acquire Post Graduation

qualification without being a Graduate will be granted two additional increments for Graduation / Graduation Pay as the case may be subject to the following conditions :

(i) Employees registered under Post Graduation Courses of Open University have either passed the foundation/entrance course or attended the Bachelor's Preparatory Programme.

(ii) They pursue the same course and take the same examination as the formal stream students.

8. Palaniyandi, on acquiring his Masters Degree had been promoted as clerk on the basis of the terms of the Promotion Policy Settlement. He had requested to the Respondent for two additional increments, also on the basis of his newly acquired qualification and this has been granted also w.e.f. 01.05.2010. However, subsequently he received a communication from the Respondent to the effect that he has managed to get the two additional increments on the basis of mis-representation and that the additional increments are cancelled. Palaniyandi was also directed to remit back the excess amount drawn by him on the basis of the two additional increments granted to him. The stand of the Respondent is that Palaniyandi though acquired Post Graduation qualification had not complied with the conditions stipulated in Clause-34 of the Bipartite Settlement and therefore he is not eligible for two additional increments. According to the petitioner, the stand of the Respondent is without any basis. According to it, Sri Palaniyandi is eligible for two additional increments since he had acquired qualification after complying with the conditions in the Bipartite Settlement.

9. It is not in dispute under which conditions an employee who acquires Post Graduate degree becomes eligible for two additional increments. The only question to be considered is whether the stand of the management that Palaniyandi had not complied with the conditions in Clause-34 of the Bipartite Settlement dated 02.06.2005 as modified on 27.04,.2010 is correct. The petitioner has produced the relevant documents in support of his case. Ext.W1 is the copy of the circular given by the Respondent alongwith the relevant portion of the Bipartite Settlement containing the modified clause regarding sanction of two additional increments for those employees who acquired Post Graduate qualification without being a Graduate. Ext.W2 is the copy of the representation given by Palaniyandi to the Management stating that he has successfully completed his MA (History) course and that he may be sanctioned the eligible increments. He has stated in this that he has passed the entrance test for those without under-graduate degree under Open University System and had taken the same syllabus and exam prescribed for the Post Graduate students of the regular stream. Ext.W7 is the copy of the letter written by the Chief Manager to CDPC, Chennai where Palaniyandi was working congratulating Palaniyanadi for his success and also with copy to the Circle Office directing it to release any eligible increment payable to Palaniyandi on acquiring his Post Graduate qualification. On the basis of this, the Zonal Office has written to the Chief Manager of CDPC, Chennai sanctioning two additional increments to Palaniyandi w.e.f. 15.06.2010, as seen from Ext.W8. Ext.W10 is the letter written by Palaniyandi to the Assistant General Manager to sanction increments with retrospective effect as per the provision of the Bipartite Settlement dated 02.06.2005.

10. It was after Palaniyandi has written Ext.W10 letter, the Zonal Office has written to the branch of Palaniyandi stating that as per verification report received from Annamalai University Palaniyandi has not fulfilled the conditions as stipulated in the Bipartite Settlement and therefore is not eligible for the two special increments. Basic Pay of the Palaniyandi was reduced as a result of the cancellation of the increments. The branch was given direction to recover excess salary drawn by Palaniyandi consequent to the grant of two additional increments.

11. Is there any justification for the Respondent in cancelling the two increments given and directing recovery of the amount drawn consequent to the grant of two additional increments? On going through the documents, it could be seen that Palaniyandi, the aggrieved worker has acquired Post Graduation Qualification on compliance with the modified stipulations in Clause-34 of the Bipartite Settlement. It has been alleged by the Respondent that it was accepting the representation given by the employee on face value, without verifying the correctness of the representation that the two increments were sanctioned and that on later verification, this was found to be mis-representation. While making such a statement the Respondent was referring to Ext.W2, the request made by him for sanction of the eligible increments. Ext.W3 is the communication from Annamalai University regarding attaining of qualification by Palaniyandi. The University has informed in this that the employee was offered Masters Degree after completing the age of 21 years and passing the entrance test without under-graduate degree under Open University System. It further informed that after passing the entrance test, the candidates including Palaniyandi were given admission to Post-Graduate First Year course and that they had taken the same syllabus and examinations prescribed for the Post Graduate students of regular stream. The copy of the Hall Ticket for the entrance test has been produced by the petitioner and marked as Ext.W4. Ext.W6 is the provisional certificate issued to Palaniyandi stating that he has qualified for the Degree of Master of Arts in History. The copy of the original of Ext.W3 is seen produced by the Respondent also and marked as Ext.M6. This document very well reveals that Palaniyandi had undergone a course and had written entrance test and it was only after passing this test he was offered admission to Post Graduate course by

the University. So, the admission of Palaniyandi to MA (History) Degree Course and acquiring the degree is in accordance with the stipulation given in the modified Clause-34 of the Bipartite Settlement. Apart from the promotion given to him, Palaniyandi was entitled to the two additional increments also on the basis of the Bipartite Settlement. So there was no justification for the cancellation of the two increments by the Respondent. Even more unjust is the direction given by the Respondent to recover the amount already drawn by Palaniyandi consequent to the grant of two additional increments. The Respondent is liable to withdraw the cancellation of the two additional increments.

12. The prayer in the Claim Statement is to grant the two additional increments with retrospective effect from 02.06.2005. The concerned employee has acquired the qualification in May 1998. He was promoted as Clerk in August 1999. Increments granted as per Ext.W8 was w.e.f. 15.06.2010, the date of the annual increment. The modified Bipartite Settlements stipulating for payment of two increments for Post Graduation qualification without being a graduate is to take effect from 02.06.2005 even as per the Counter Statement. So, the concerned employee is entitled to the benefit of the settlement from 02.06.2005. The employee is eligible for two additional increment from this date.

13. Accordingly, an order is passed as follows:

The Respondent shall re-fix the wages of R. Palaniyandi by granting him two additional increments with effect from 02.06.2005 and shall pay the arrears of wages.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side :

Ex.No.	Date	Description
Ex.W1	20.05.2010	HO/HRM Dept. Circular No. 29/ 2010-11 (with the 1st page and relevant page)
Ex.W2	Nil	Request from Sri R. Palaniyandi, requesting for sanctioning of graduation increment
Ex.W3	06.09.2010	Letter from Annamalai University addressed to Sri R. Palaniyandi
Ex.W4	-	Copies of ID card and hall ticket for entrance test of Sri R. Palaniyandi
Ex.W5	-	Copy of entrance examination hall ticket
Ex.W6	09.11.1998	Copy of provisional certificate of MA Degree of Sri R. Palaniyandi
Ex.W7	07.12.2010	Letter from HRM Deptt. For noting down the qualification acquired by Sri R. Palaniyandi
Ex.W8	09.03.2011	Letter from Zonal Office (North), Chennai sanctioning two increments for acquiring post graduation qualification
Ex.W9	25.05.2011	Letter from Sri R. Palaniyandi for retrospective effect sanction of increments
Ex.W10	19.08.2011	Letter from Zonal office (North), Chennai cancelling the increments sanctioned already
Ex.W11	23.08.2011	Letter from Indian Bank Employees' Union, Chennai addressed to ALC, Chennai raising the dispute over the withdrawal of increments
Ex.W12	10.10.2011	Counter reply submitted by Zonal Office (North), Chennai for the ID raised by the Union

On the Respondent's side :

Ex.No.	Date	Description
Ex.M1	13.05.2010	Indian Bank – HRM Dept. – Extract of IX Bipartite Settlement – HRM – 21/2010-11 dated 13.05.2010
Ex.M2	15.05.2010	Indian Bank – HRM Dept. – IX BPS – HRM – 26/2010-11 dated 15.05.2011 – Payment of arrears to Award Staff – clarification
Ex.M3	13.09.2010	Representation of petitioner
Ex.M4	20.07.2011	Letter from Indian Bank, Head Office to Indian Bank, ZO, Chennai-North
Ex.M5	29.07.2011	Letter from Indian Bank, Chennai-North to Indian Bank, H.O. – HRM Deptt. Chennai-600001 – enclosing letter from Indian Bank,

		Chief Manager-HRF to Indian Bank C.V.P.C., Chennai reg. Palaniyandi
Ex.M6	06.09.2010	Copy of certificate from Annamalai University, DDE, Open University System to R. Palaniyandi – signed for Director
Ex.M7	18.11.2010	Letter from Controller of Examinations, Annamalai University to Branch Manager, Indian Bank, Annamalai Nagar
Ex.M8	02.06.2005	8th Bipartite Settlement – Extract – Clause-34 – "Graduation Pay".
Ex.M9	27.04.2010	9th Bipartite Settlement – Extract – Clause – 11 (XVI)

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 76/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/110/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 76/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12011/110/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 4th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 76/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN

The General Secretary : 1st Party/
Indian Bank Employees Union Petitioner Union
No. 6, Moore Street, Mannady Corner
Chennai-600001

AND

The Zonal Manager : 2nd Party/
Indian Bank Respondent
Corporate Office
Avvai Shanmugam Salai
Chennai-600014

Appearance :

For the 1st Party/ Petitioner Union : Sri J. Thomas Jeyaprabhakaran, Authorized Representative

For the 1st Party/ Respondent : M/s T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/110/2011-IR (B-II) dated 21.09.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank in reducing the salary and to recover the alleged excess salary paid to Sri K. Gunasekaran SR No. 55590/CL-SH Udayarpalayam and stoppage of 2 special increments is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 76/2012 and issued notice to both sides. The petitioner appeared through authorized representative and the respondent through its counsel and filed their claim and counter statement respectively. The petitioner has filed a rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement in brief are these:

The petitioner is a recognized Trade Union and is represented by its General Secretary. Gunasekaran, a member of the Petitioner Union who was working as Sub-Staff in the Respondent Bank had passed M.A (History) Examination conducted by the Annamalai University during May 2000 under the Open University System. In terms of the promotion policy settlement signed between the Federation of Indian Bank Employees' Union and Bank Management, sub-staff members are eligible to be promoted as Clerks on completion of their graduation or post-graduation. Accordingly, Gunasekaran was promoted as Clerk on 03.08.1994. Initially he was posted to Kallakudi branch but was subsequently transferred to

Udayarpalayam branch. In the Bipartite Settlement dated 27.04.2010, two additional increments were provided for, for graduation. It was further provided that for those who acquire post graduation qualification without being a graduate also two additional increments will be granted subject to the conditions that the employees who are registered under the post-graduation courses of Open University have either passed the foundation/ entrance course or attended the Bachelor's Preparatory Programme and they pursued the same course and had taken the same examination as the formal stream students. Gunasekaran was admitted to Masters Degree Course after duly completing the entrance course for two weeks by attending the preparatory course classes held at the University Campus and thereafter passing the entrance test conducted by the University. Gunasekaran had passed MA Degree Examination held in May 2000. Thereafter on his request to the Circle Office two additional increments were sanctioned to Gunasekaran w.e.f. 02.06.2005. While so, he was served with a communication stating that he had not fulfilled the conditions as stipulated in the Bipartite Settlement and is not eligible for special increments. The Head Office had directed to cancel the increments already sanctioned and to recover the excess salary paid. The action of the Respondent is not justified since Gunasekaran had undergone the entrance course held at the University and was admitted to the MA Degree only after passing entrance test. In any case, the Respondent was not justified in directing to recover the amount already received by Gunasekaran consequent to sanction of two special increments to him. An order may be passed holding that the action of the Management in reducing the salary and recovering the salary already paid to Gunasekaran is illegal and unjustified and also directing the Respondent to desist from recovering any amount as excess amount and to return the excess amount already recovered and to re-fix his wages by granting two additional increments with retrospective effect from 02.06.2005.

4. The Respondent has filed Counter Statement contending as follows:

By the 8th Bipartite Settlement dated 02.06.2005 it was provided that a non-subordinate employee who acquires graduation/post graduation qualification from universities/open universities which are recognized by the University Grants Commission will be considered as having acquired graduate qualification and will be eligible for two additional increments for graduation subject to the conditions that employees who register under Graduation/ Post-Graduation Courses of Open University have either passed the foundation / entrance course or attended the Bachelor' Preparatory Programme and pursued the same course and had taken the same examination as the formal stream students, w.e.f. 02.06.2005. This was later modified by which Post Graduates who acquired qualification without being a graduate will be granted two additional increments for graduation subject to the condition that the employee who have registered under the Post Graduate Courses of Open University have passed the foundation / entrance course or attended the Bachelor's Preparatory Programme and pursued the same course and have taken the same examination as the formal stream students. Gunasekaran had directly acquired Masters Degree in History from Annamalai University in May 2000. He made a representation that he had satisfied the stipulations for grant of two increments. Based on this declaration, on its face value, increments were sanctioned to him. Later, on reference made to the Annamalai University it was revealed that Gunasekaran had not attended and passed the foundation / entrance course or attended the Bachelor's Preparatory Programme. Consequently, the grant of additional increments was withdrawn w.e.f. August 2001. As the increment earlier granted was on the basis of mis-representation the amount paid was proposed to be recovered. The petitioner is not entitled to any relief.

5. The evidence in the case consists of documents marked as Ext.W1 to Ext.W9 and Ext.M1 to Ext.M7. No oral evidence was adduced by either side.

6. The points for consideration are :

(i) Whether the Respondent is justified in reducing the salary and recovering the excess salary paid to Gunasekaran and cancelling the two special increments?

(ii) What is the relief to which Gunasekaran is entitled?

The Points

7. Gunasekaran, a member of the Petitioner Union was working as Sub-Staff with the Respondent. He had acquired Post Graduate qualification from Annamalai University in the examination held in May 2000 without being a Graduate. As per the Bipartite Settlement dated 27.04.2010 entered into between the Employees' Federation and the Respondent, an employee who acquire Post Graduation qualification without being a Graduate will be granted two additional increments for Graduation/Graduation Pay as the case may be subject to the following conditions :

(i) Employees registered under Post Graduation Courses of Open University have either passed the foundation/entrance course or attended the Bachelor's Preparatory Programme.

(ii) They pursue the same course and take the same examination as the formal stream students.

8. Gunasekaran, on acquiring his Masters Degree had been promoted as clerk on the basis of the terms of the Bipartite Settlement. He had requested to the Respondent for two additional increments on the basis of his newly acquired qualification and this has been granted also w.e.f. 02.06.2005. However, subsequently he received a communication from the Respondent to the effect that he has managed to get the two additional increments on the

basis of mis-representation and that the additional increments are cancelled. Gunasekaran was also directed to remit back the excess amount drawn by him on the basis of the two additional increments granted to him. The stand of the Respondent is that Gunasekaran, though acquired Post Graduation qualification had not complied with the conditions stipulated in the Bipartite Settlement and therefore he is not eligible for two additional increments. According to the petitioner, the stand of the Respondent is without any basis. According to it, Sri Gunasekaran is eligible for two additional increments since he had acquired qualification after complying with the conditions in the Bipartite Settlement.

9. It is not in dispute under which conditions an employee who acquires Post Graduate degree becomes eligible for two additional increments. The only question to be considered is whether the stand of the management that Gunasekaran had not complied with the conditions in the Bipartite Settlement dated 02.06.2005 as modified on 27.04.2010 is correct. The petitioner has produced the relevant documents in support of his case. Ext.W1 is the copy of the circular given by the Respondent alongwith the relevant portion of the Bipartite Settlement containing the modified clause regarding sanction of two additional increments for those employees who acquired Post Graduate qualification without being a Graduate. Ext.W2 is the copy of the representation given by Gunasekaran to the Management stating that he has successfully completed his MA (History) course and that he may be sanctioned the eligible increments for graduation. He has stated in this that he has passed the entrance test for those without under-graduate degree under Open University System and had taken the same syllabus and examination prescribed for the Post Graduate students of the regular stream. Ext.W5 is the copy of the letter written by the Chief Manager to the Manager of Udayarpalayam branch where Gunasekaran was working congratulating him for his success and also with copy to the Circle Office directing it to release any eligible increment payable to Gunasekaran on acquiring his Post Graduate qualification. On the basis of this, the Zonal Office has written to the Manager of Udayarpalayam branch sanctioning two additional increments to Gunasekaran w.e.f. 01.06.2005, as seen from Ext.W8.

10. Subsequently, the Zonal Office has written to the branch of Gunasekaran stating that as per verification report received from Annamalai University, Gunasekaran has not fulfilled the conditions as stipulated in the Bipartite Settlement and therefore is not eligible for the two special increments. Basic Pay of Gunasekaran was reduced as a result of the cancellation of the increments. The branch was given direction to recover excess salary drawn by him consequent to the grant of two additional increments.

11. Is there any justification for the Respondent in cancelling the two increments given and directing recovery of the amount drawn consequent to the grant of two additional increments? On going through the documents, it could be seen that Gunasekaran, the aggrieved worker has acquired Post Graduation Qualification on compliance with the modified stipulations in Clause-34 of the Bipartite Settlement. It has been alleged by the Respondent that it was accepting the representation given by the employee on face value, without verifying the correctness of the representation that the two increments were sanctioned and that on later verification, this was found to be mis-representation. While making such a statement the Respondent was referring to Ext.W2, the request made by him for sanction of the eligible increments. Ext.W3 is the communication from Annamalai University regarding attaining of qualification by Gunasekaran. The University has informed in this that the employee was offered Masters Degree after completing the age of 21 years and passing the entrance test without under-graduate degree under Open University System. It further informs that after passing the entrance test, the candidates including Gunasekaran were given admission to Post-Graduate First Year course and that they had taken the same syllabus and examinations prescribed for the Post Graduate students of regular stream. The copy of the provisional certificate given to Gunasekaran is seen produced by the Respondent and is marked as Ext.M3. Ex.M5 is the copy of the letter from Annamalai University to the petitioner. This document very well reveals that Gunasekaran had undergone a course and had written entrance test and it was only after passing this test he was offered admission to Post Graduate course by the University. So, the admission of Gunasekaran to MA (History) Degree Course and acquiring the degree is in accordance with the stipulation given in the modified Clause-34 of the Bipartite Settlement. Apart from the promotion given to him, Gunasekaran was entitled to the two additional increments also on the basis of the Bipartite Settlement. So there was no justification for the cancellation of the two increments by the Respondent. Even more unjust is the direction given by the Respondent to recover the amount already drawn by Gunasekaran consequent to the grant of two additional increments. The Respondent is liable to withdraw the cancellation of the two additional increments and also repay the amount, if any, recovered from Gunasekaran as excess pay.

12. The prayer in the Claim Statement is to grant the two additional increments with retrospective effect from 02.06.2005. This is the date from which two additional increments were granted earlier. The employee is eligible for two additional increments from this date.

13. Accordingly, an order is passed as follows:

The Respondent shall re-fix the wages of K. Gunasekaran by granting him two additional increments with effect from 02.06.2005 and shall pay him the arrears of wages.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	20.05.2010	HO/HRM Dept. Circular No. 29/ 2010-11 (with the 1st page and relevant page)
Ex.W2	26.06.2010	Request from Sri K. Gunasekaran requesting for sanctioning of graduation increment
Ex.W3	16.06.2010	Letter from Annamalai University addressed to Sri K. Gunasekaran
Ex.W4	29.06.2010	Letter from Zonal Office, Trichy addressed to HO/HRM Department
Ex.W5	12.11.2010	Letter from HRM Deptt. For noting down the qualification acquired by Sri K. Gunasekaran addressed to Udayarpalayam branch
Ex.W6	27.12.2010	Letter from Zonal Office, Trichy addressed to Udayarpalayam branch sanctioning two stages of Professional Qualification pay
Ex.W7	20.07.2011	Letter from HRM Deptt. addressed to Zonal Office, Trichy cancelling the increments sanctioned to Sri K. Gunasekaran
Ex.W8	22.09.2011	Letter from Indian Bank Employees' Union, Chennai addressed to ALC, Chennai raising the dispute over the withdrawal of increments
Ex.W9	15.10.2011	Counter reply submitted by Zonal Office (North), Chennai for the ID raised by the Union

On the Respondent's side

Ex.No.	Date	Description
Ex.M1	13.05.2010	Indian Bank – HRM Dept. – Extract of IX Bipartite Settlement – HRM – 21/2010-11 dated 13.05.2010
Ex.M2	15.05.2010	Indian Bank – HRM Dept. – IX BPS – HRM – 26/2010-11 dated 15.05.2011 – Payment of arrears to Award Staff – clarification
Ex.M3	29.09.2000	Provisional Certificate issued by Annamalai University – to K. Gunasekaran – Passed MA in History in May 2010
Ex.M4	17.07.2010 (Sic) 01.07.2010	Letter from Respondent to Branch Manager, Indian Bank, Annamalai Nagar to arrange to verify the genuineness of the certificate
Ex.M5	20.08.2010	Reply from Controller of Examinations, Annamalai University to the petitioner
Ex.M6	02.06.2005	8th Bipartite Settlement – Extract – Clause-34 – "Graduation Pay"
Ex.M7	-	9th Bipartite Settlement – Extract – Clause-11 (XVI)

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1378.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 09/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/16/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 09/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12012/16/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 27th February, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 9/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN:

Sri A. Anbalagan : 1st Party/ Petitioner

AND

The Deputy General Manager : 2nd Party/ Respondent
Indian Bank, Circle Office
LRN Colony, Saradha College Road
Salem-636007

Appearance :

For the 1st Party/ Petitioner : M/s J. Suresh, Authorized Representative

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/16/2012-IR (B-II) dated 24.01.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Circle Office, Salem in imposing the punishment of "Dismissal without notice" upon Sri A. Anbalagan, an Ex-Clerk/Shroff of Namakkal Branch, Indian Bank w.e.f. 25.11.2009 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 9/2013 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed a rejoinder after the counter statement was filed.

3. The averments in the Claim Statement in brief are these:

The petitioner had joined the service of the Respondent Bank as Sub-Staff in 1985. In 1993 he was promoted as Clerk and was posted at Namakkal Branch. He has been discharging his duties sincerely and efficiently. On 09.09.2008, while working at Namakkal Branch the petitioner was placed under suspension. A Show Cause Notice was issued to him. The petitioner had given reply to the notice. In spite of that a charge sheet was served on the petitioner alleging that he had un-authorizedly and clandestinely withheld the pass book of one Nagammal, a customer of the branch from the 1st week of January 2008 till June 2008 and had refused to return it to her in spite of several request made by her, that while holding the pass book the petitioner had fraudulently made two cash withdrawals of Rs. 5,000/- each, one on 14.01.2008 and the other on 24.01.2008 and that payments were made by him despite deficiencies in the withdrawal slips. An enquiry was conducted and a report was given finding the petitioner guilty of the charges. The petitioner was asked to submit his comments on the findings. Though the petitioner had submitted his comments, the Disciplinary Authority had held the petitioner guilty of the charges and had imposed the punishment of dismissal without notice by order dated 25.11.2009. The enquiry against the petitioner was not conducted in a fair and proper manner. The petitioner has not committed the alleged misdeeds. The petitioner was dismissed from service without any justification. An order may be passed holding that the dismissal of the petitioner from service without notice is illegal and also directing the Respondent to reinstate him into service with back wages and all other benefits.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent is a nationalized bank having branches throughout the country. The bank had introduced single window operation system where all services offered by the bank will be delivered at a single counter. When a single window system is in operation, the instrument for payment does not need any clearance at Officer's level for cheques upto Rs. 20,000/-. In case of withdrawal by using withdrawal slip, the account holder should personally come to the branch or should give an authorization letter to the person who presents the withdrawal slip and the account holder or the authorized person should come to the branch with the pass book. The maximum withdrawal amount by a third party through withdrawal slips is restricted to Rs. 1,000/-. In the year 2008, the petitioner was working as Clerk-cum-Shroff in the Namakkal branch of the Respondent Bank. In the last week of May 2008 Nagammal who was earlier working as a Sweeper and was drawing pension through her SB account in the Respondent Bank had represented that the petitioner had taken her pass book and had not returned it. On enquiry with the petitioner he had stated that it was misplaced somewhere. Nagammal, on verification of the account informed the Manager of the Branch that there is shortage in the amount shown as balance in her account. She stated that she was drawing Rs. 1,300/- only per month and that she had never withdrawn @ Rs. 5,000/- per month. On 14.01.2008 and 24.01.2008 on which dates withdrawals of @ Rs. 5,000/- each were made the petitioner was the single window operator and the withdrawals have been passed in his ID. Later, the Manager of the bank noticed that two remittances @ Rs.5,010/- each were made to the account of Nagammal. On 09.06.2008, Nagammal informed that no one had remitted amount on her behalf. Preliminary investigation revealed that petitioner had fraudulently withdrawn two amounts and had later made remittances to make good the shortage. On 26.07.2008, the petitioner had confessed to have withdrawn the amounts. A Show Cause Notice was issued to him and an enquiry was conducted subsequently. The petitioner was found guilty of the charges and the punishment of dismissal

from service without notice was imposed on him. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder after the Counter Statement was filed.

6. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W33 and Ext.M1 to Ext.M7.

7. The points for consideration are :

(i) Whether the action of the Management in imposing the punishment of dismissal without notice on the petitioner w.e.f. 25.11.2009 is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

8. The petitioner had admittedly entered the service of the Bank as Sub-Staff in 1985 and was promoted as Clerk and posted at Namakkal Branch in 1993. While he was working at the Bank one Nagammal who was earlier working in the Bank as Sweeper and was drawing her pension through her SB A/c in the bank had complained that the petitioner who had obtained her pass book had failed to return it in spite of repeated requests. Subsequently it was noticed that two withdrawals of Rs. 5,000/- each were made from the account of Nagammal, while the petitioner was working as single window operator. Nagammal had denied to have made these withdrawals. On preliminary enquiry, the Bank has issued charge memo on the petitioner alleging that he had unauthorizedly retained the pass book of Nagammal and that while he was having the pass book with him he had clandestinely made two withdrawals of Rs. 5,000/- each from the account of Nagammal without adhering to the guidelines for single window operation system.

9. There is no case for the petitioner that enquiry was not conducted in a fair and proper manner. Both sides have chosen to mark documents including the enquiry proceedings and have relied upon these to advance their arguments. The petitioner was examined before this Tribunal only to advance his case that he was not employed gainfully after he was dismissed from service by the Respondent

10. The only question for consideration is whether there is any justification in the dismissal of the petitioner from service by the Respondent. The main charge against the petitioner is that he had clandestinely withdrawn Rs. 5,000/- each from the account of Nagammal on two different dates. It is also alleged that he had unauthroizedly retained the pass book of Nagammal and had refused to return it to her in spite of requests made by her. Ext.W1 is the Show Cause Notice that was issued to the petitioner after detection of the alleged misconduct and Ext.W2 is the reply given by him to the Show Cause Notice. It is clear from Ext.W2 the reply given that Nagammal, the account holder with SB Account No. 443833438 was personally known to the petitioner. In his reply he has stated that since she is residing in the same street in which he is residing, the pass book was handed over to him for updating it. In answer to the allegation that he had retained the pass book in spite of request from Nagammal he had stated that due to pressure of work he has forgotten to update the pass book even after some reminders from Nagammal. That the petitioner was single window operator on 14.01.2008 and 24.01.2008 also is not disputed by the petitioner. He has stated in Ext.W2 that due to heavy rush he could not remember who had tendered the instrument on 14.01.2008 and 24.01.2008. At the same time he has stated that so far as illiterate customers are concerned it is mandatory that they should come in person for withdrawals. He has then added that he has not deviated from the practice followed by the branch. Ex.W3 is the copy of the order of suspension served on the petitioner since his reply to the Show Cause Notice was found unsatisfactory. It was thereafter charge memo was served on the petitioner and an enquiry was conducted. The Management had examined the Assistant Manager of Namakkal branch during the period as MW1. MW2 was the then Manager of the Namakkal branch. MW3 is the Inspector of Police of Fingerprint Bureau who had examined the thumb impression from found in the withdrawal slip that was used to withdraw Rs. 5,000/- on two different dates from the account of Nagammal. MW4 is the Vigilance Officer who had conducted an enquiry and submitted report. MW5 was previously the Chief Manager of Namakkal branch.

11. MW1, the Assistant Manager was examined to prove the document marked as MEX2 in the enquiry proceedings and marked as Ext.W6 here. MW1 has stated that this was written by him at the request of the then Senior Manager. His help was sought since the Senior Manager was from Karnataka and another Officer was from Kerala. Ext.W6 complaint was written by MW1 at the instance of Nagammal. It was read over to her. Nagammal at that time showed the pass book stating that it was a new pass book. The petitioner seems to have issued a new pass book to Nagammal after her complaint on the pretext that the previous one is lost. Nagammal had complained that amount was withdrawn from her account. There were two remittances of Rs. 5,010/- each subsequently from Salem. Nagammal had informed the Vigilance Officer that she had not given any money to any one at Salem and no one had repaid money to her through her account also.

12. MW2 has deposed that the two withdrawal slips of Rs. 5,000/- each from the SB Account of Nagammal were made through single window on 14.01.2008 and 24.01.2008 respectively. The two remittances of Rs. 5,010/- each from Salem were made on 09.06.2008. The attendance register of the bank of the day was marked as MEX-7 to prove that the petitioner was not present in the bank on the day but was availing Casual Leave. This witness has stated that

Nagammal had given the pass book for updating to the petitioner. But this was not returned and she had given a complaint to the Chief Manager and Asstt. Branch Manager stating that her pass book was not returned. It was returned after a prolonged delay. She came to know on getting the pass book regarding the withdrawals of Rs. 5,000/- each on two different dates. She had then given a complaint to the Chief Manager.

13. MW3 has stated that on comparing the admitted finger impressions of Nagammal with the finger impressions found in the withdrawal slips used for withdrawing @ Rs. 5,000/- on two different dates, the thumb impressions in the withdrawal slips were found to be not identical with any of the admitted finger impressions.

14. MW4 has stated that he is the one who investigated the complaint against the petitioner. He has stated that in the presence of MW1 and another he had questioned Nagammal. She had told him about the withdrawal of Rs. 10,000/- from her account on two different occasions. She has also told him about the retention of the pass book by the petitioner. According to this witness he had shown the withdrawal slips to the petitioner and the petitioner had admitted the guilt. According to MW4, the exact words spoken by the petitioner were "I have done mistake, please pardon me". Though the petitioner was asked to put it in writing he had refused. So MW1 had taken it down in the presence of two Officers who were present and had obtained their signatures. It is for the purpose of proving the alleged admission also MW2 has examined.

15. The Authorized Representative of the petitioner has pointed out that Nagammal on whose complaint the matter was investigated has not been examined. According to him in the absence of the evidence of Nagammal there is no acceptable proof of the alleged misconduct committed by the petitioner. No doubt, Nagammal is a material witness to the case and should have been examined. During the enquiry proceedings attempts seem to have been made to bring her before the Enquiry Officer to give evidence. However, since she was not available at the Station the Management had sought further time but the Enquiry Officer had closed the evidence since several opportunities were already given for the purpose.

16. Even without the evidence of Nagammal, there is sufficient material to come to the conclusion that the petitioner or someone with his concurrence must have withdrawn amounts on two different occasions from the account of Nagammal. There is the admission by the petitioner that the pass book of Nagammal was with him at that time. Admittedly the petitioner was the single window operator on the dates when withdrawals were made. It is clear from Ext.W2 reply that Nagammal being a resident of the same street is a person personally known to him. The petitioner is aware that if the amount is to be withdrawn through withdrawals by illiterate customers, they should come in person for withdrawals. What is stated in Ext.W2 is that because of the rush on 14th and 24th January, 2008 on which dates withdrawals were made there was heavy rush and he does not remember who has tendered the instrument. He has no case that Nagammal is a literate person, on the other hand he knows her to be an illiterate. MW4 who interrogated Nagammal has deposed that she is illiterate. Since she is a person known to him personally he must have remembered it if Nagammal had come to the Bank for withdrawing the amounts. It is very much clear from the evidence of MW3 from finger print bureau and Ext.W5, the report of the finger print bureau that the finger impressions found in the withdrawal slips were not that of Nagammal so necessarily someone other than Nagammal has withdrawn the amount. The guidelines for single window operation states that withdrawal through withdrawal slips by a third person should not be above Rs. 1,000/-. In spite of all this, withdrawals are made at the rate of Rs. 5,000/- on two different dates while the petitioner was the single window operator.

17. The consistent case of Nagammal seems to be that she was drawing only Rs. 1,300/- per month out of the pension amount remitted to her account. Ext.W14 the extract of the pass book would show that Nagammal, without exception, was withdrawing at the rate of Rs. 1,300/- every month. This poor woman who was getting a meagre pension seems to have been spending just Rs. 1,300/- for her daily expenses every month and retaining the balance amount in her account for her urgent requirements. It must have been because of this she was able to tell categorically to the Manager that she had not withdrawn at the rate of Rs. 5,000/- from her account on two dates in January 2008.

18. There is a fact that rather than returning the old pass book, a new pass book as one in continuation of the old pass book was issued to Nagammal by the petitioner. The date on which this was done also is material. After Nagammal has informed the Manager that she did not make the withdrawals, two remittances @ Rs. 5010/- each had come to the account from the branch at Salem. The remittances were made on 09.06.2008. Nagammal has taken the stand that there was no one to make remittances to her account at Salem. It has been pointed out on behalf of the Management that the petitioner was absent from the Bank on this particular date. The Vigilance Officer had gone to Salem and made enquiry and had found that the address of the person who made the remittances at Salem is a fictitious one. He was not able to trace the addressee. Subsequently, he had sent a letter to the addressee and this had been returned unserved as he could not be traced. The stand taken by the Management is that the petitioner himself might have remitted these amounts after the withdrawals were revealed. It is pointed out that the distance between Namakkal and Salem is only 80 kms.

19. Another factor relied upon by the management is the admission said to have been made by the petitioner regarding the mistake committed by him. It has been argued

on behalf of the petitioner that the Investigating Officer as well as the Manager were not conversant with Tamil, one being from Kerala and the other from Karnataka. It is seen from the evidence given by MW2 itself that the help of MW1 was sought to prepare the complaint of Nagammal since they were not conversant with the language. However, it is clear from the evidence of MW2 itself that though the witness could not write Tamil, he can speak and understand Tamil perfectly well, so there was no difficulty for him to make out the words spoken by petitioner. There is no reason to disbelieve the version of this witness. So it is clear that some sort of admission was made by the petitioner regarding the charges against him.

20. In any case the evidence is clear and speaks of the misdeed of the petitioner. He was the single window operator who processed the two withdrawals on the relevant dates. The finger print report shows that the withdrawal slips do not contain the thumb impression of Nagammal. The petitioner, in spite of his knowledge that Nagammal is not literate had allowed withdrawals even if by a third person, and that also exceeding the limit. So the second charge which is the main charge is very much established. Regarding the retention of the pass book there is the admission of the petitioner himself in Ext.W2, apart from the version of the witnesses. It must have been with clandestine motive the pass book was retained by him.

21. Now the question is whether the punishment imposed commensurate with the offence charged, and whether the punishment is justified in the circumstances. The petitioner was in service from 1985. There is no case of any previous misconduct on the part of the petitioner. When the nature of the offence is taken into account, also the punishment seems very harsh. A lesser punishment will meet the ends of justice. So, I am inclined to reduce the punishment to Compulsory Retirement from service.

22. Accordingly, the following order is passed:

"The punishment imposed on the petitioner is modified and reduced to Compulsory Retirement from service"

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th February, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri A. Anbalagan

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	09.09.2008	Show Cause Notice issued by CO/ Salem
Ex.W2	26.09.2008	Reply to the Show Cause Notice
Ex.W3	12.12.2008	Charge Sheet issued by CO/Salem
Ex.W4	12.01.2009 29.07.2009 30.07.2009 03.08.2009 04.08.2009	Proceedings of the departmental enquiry conducted against Sri Anbalagan
Ex.W5	7/2008	Letter from Mrs. Nagammal, Namakkal
Ex.W6	26.07.2008	Letter addressed to Investigating Officer from Mrs. Nagammal
Ex.W7	-	Withdrawal slips dated 14.01.2008 and 24.01.2008
Ex.W8	05.06.2008	Letter from Mrs. Nagammal to Branch Manager, Namakkal
Ex.W9	29.07.2008	Investigation report of Mr. L. Paneerselvam
Ex.W10	-	Specimen signature card of a/c 28887
Ex.W11	-	Attendance Register for the month of June 2008
Ex.W12	-	Credit challan for the a/c 443883438 dated 09.06.2008
Ex.W13	-	Teller cash register report for 14.01.2008 and 24.01.2008
Ex.W14	-	Passbook of a/c 443833438
Ex.W15	01.06.2009	Tamil Nadu Finger Print Bureau Report
Ex.W16	23.07.2008	Namakkal branch letter to Circle Office, Salem
Ex.W17	28.07.2008	Letter to Nagaraj, Salem from Circle Office, Salem
Ex.W18	-	Envelope addressed to Nagaraj, Salem
Ex.W19	10.09.2008	Letter from Namakkal branch to Circle Office, Salem
Ex.W20	26.09.2008	Reply to A. Anbalagan to the Show Cause Notice
Ex.W21	-	Statement of a/c of Mrs. Nagammal for the period from 01.01.2006 to 26.07.2008
Ex.W22	-	Relevant pages of manual of instructions on Deposits
Ex.W23	-	Withdrawal slips dated 01.02.2007 and 04.02.2008
Ex.W24	22.08.2009	Present Officer's brief
Ex.W25	05.09.2009	Defence summing up
Ex.W26	17.09.2009	Enquiry Officer's findings

Ex.W27	29.09.2009	Employees' comments on Enquiry Officer's findings
Ex.W28	31.10.2009	Second Show Cause Notice
Ex.W29	07.11.2009	Reply to the Second Show Cause Notice
Ex.W30	25.11.2009	Final orders of the Disciplinary Authority
Ex.W31	21.12.2009	Appeal against the punishment to the Appellate Authority
Ex.W32	10.07.2010	Orders of the Appellate Authority
Ex.W33	05.11.2010	Petition under Section.2(a) of ID Act to ALC (C), Chennai

On the Management's side

Ex.No.	Date	Description
Ex.M1	26.09.2005	Single window system operation guidelines–Extract–pages 1 to 17
Ex.M2	28.07.2008	Letter from CO, Salem to Mr. Nagaraj, Salem and cover returned undelivered (Unopened cover) RLAD – A – 1432 – Ex.MEX – 13 page no. 70 to 72 in petitioner typeset and MEX 14 (P.72)
Ex.M3	15.09.2008	Letter from Anbalagan to CO, Salem requesting time to submit his explanation
Ex.M4	17.09.2008	Letter from Indian Bank, Circle Office, Salem granting 3 weeks time
Ex.M5	24.09.2009	Letter from Anbalagan to Circle Office, Salem requesting time to submit reply to the enquiry officer findings
Ex.M6	01.10.2009	Letter from CO, Salem to Anbalagan granting time to submit his reply on the findings of the enquiry officer
Ex.M7	-	Statement of Account of Petitioner – A/c No. 443762828 – crediting of his PF and Gratuity dues.

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1379.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 81/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/55/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 81/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12011/55/2013-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 11th April, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 81/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN :

The General Secretary : 1st Party/
Indian Bank Employees Association Petitioner Union
(Tamilnadu)
17, Ameerjan Street, Choolaimedu
Chennai-600094

AND

The General Manager (HRM) : 2nd Party/
Indian Bank, HO:HRM Department Respondent
Corporate Office
Chennai-600014

Appearance:

For the 1st Party/ Petitioner Union : Sri G. Gopal, Authorized Representative

For the 1st Party/ Respondent : M/s T.S. Gopalan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/55/2013-IR (B-II) dated 07.08.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Indian Bank management in respect of transferring Ms. M. Kanakavalli, member of the Petitioner Union by violating the provisions of the Periodical Transfer Policy is justified or not? What relief the workmen is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 81/2013 and issued notices to both sides. The First Party appeared through Authorized Representative and the Second Party through Advocate and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement in brief are these :

The petitioner is a union registered under Trade Union Act and has substantial following among workmen in the Respondent Bank. As per the transfer policy of the Respondent Bank, women employees of and above 50 years of age are exempted from the purview of periodical transfer policy. Kanakavalli, a member of the Petitioner Union and was working as a Clerk with the Respondent Bank had completed the age of 50 years as on 12.05.2012. However, by transfer order dated 11.12.2012 she was transferred to Siruseri IT Park Branch under periodical transfer policy. The transfer order was served on her on 14.05.2012 only. Though a representation was given to the Management seeking cancellation of the transfer order, it was not considered. The dispute is raised accordingly. The Respondent is to be directed to withdraw the transfer and retransfer Kanakavalli to the original place.

4. The Respondent has filed Counter Statement contending as follows:

On 29.06.2001 a settlement was signed on periodical transfer policy between Management of the Indian Bank and recognized unions. As per transfer policy female employees who are of the age of 50 years and above are not liable to be transferred. Kanakavalli who was working within Chennai Agglomeration was transferred to another branch in Chennai Circle. Ever since Kanakavalli had joined the bank on 02.05.1985 she had remained in the Corporate Office. She was transferred to Siruseri Branch which is only 28 kms. from her residence. Kanakavalli had not crossed the age of 50 years as on the date of transfer. The transfer was ordered on 30.04.2012 by the Corporate Office. It is immaterial on which date the transfer order was actually received by the concerned staff. The claim of the petitioner is liable to be rejected. An order may be passed accordingly.

5. The evidence in the case consists of documents marked as Ext.W1 to Ext.W9 and Ext. M1 to Ext. M8. No oral evidence was adduced on either side.

6. The points for consideration are:

(i) Whether the transfer of Kanakavalli by the Management is in violation of its periodical transfer policy?

(ii) What is the relief to which the concerned employee is entitled?

The Points

7. A settlement was arrived at between the Indian Bank and the Federation of Indian Bank Employees Union regarding the mode of transfer of the employees. Ext.M1 is the copy of the Memorandum of Settlement on periodical transfer for Clerical Staff entered into on 29.06.2001 in between the Management of the Indian Bank and the Bank Employees' Unions. Under Clause-6 of this settlement certain categories of employees are exempted from periodical transfer. One such category is female employees who are of the age of 50 years and above.

8. Kanakavalli on whose behalf the dispute is raised by the petitioner has been working in HRM Department of the Corporate Office in Chennai. By Ext.W2 the order dated 11.05.2012 she was transferred to Siruseri IT Park Branch. The employee seems to have been aggrieved by this. It is alleged that the transfer is in violation of the settlement entered into regarding periodical transfer of employees. The case of the concerned employee is that she has completed the age of 50 years by the time of the transfer and therefore she is not liable to be transferred.

9. The concerned employee has admittedly received the transfer order on 14.05.2012. According to the petitioner, the date of receipt of the order is very much beyond the date on which the concerned employee has completed the age of 50 years. So there could not be any doubt that the transfer is in violation of the transfer policy as per the settlement. The counsel for the Respondent has referred to the decision of the Apex Court in STATE OF PUNJAB VS. KHEMI RAM reported in 1969 6 SCC 28 in this respect. It was a case where the order of suspension on the employee was served on him after the date of his retirement. The Apex Court has held that it is not on the date of actual receipt of the order the same becomes effective but on the date on which the same has been issued. On the basis of this dictum it has been argued by the Counsel that the relevant date is the one on which the order of transfer was made and not the date on which the same was received by the concerned employee. In the light of the above dictum laid down by the Apex Court there cannot be any doubt that the material date is the date of issue of the transfer order itself and not the date on which the aggrieved employee had received the transfer order.

10. It is apparent from Ext. M1 that a female employee who is of the age of 50 years and above is exempted from the purview of periodical transfer. If actually the concerned employee was aged 50 or above as on the date of transfer she was eligible for exemption as per Clause-6 of the transfer policy. So the material question is whether the concerned employee had completed the age of 50 as on 11.05.2012, the date on which the transfer order was issued. According to the Respondent the transfer order was issued on 30.04.2012. But Ext.W2 the order of transfer to the concerned employee bears the date 11.05.2012 so there is the date on which the transfer order was issued. The Birth Certificate of concerned employee is not seen produced. However, the Date of Birth is available in Ext.W7. The

copy of the reply given by the Respondent Bank before the Assistant Labour Commissioner © in answer to the dispute raised by the petitioner. As seen from this, the date of birth of employee is 12.05.1962. The contention that is raised on behalf of the Respondent is that even if the transfer order on 11.05.2012, the concerned employee has not completed the age of 50 years on that date and she will not fall under the exempted categories of the periodical transfer policy. In this respect, the wording used in Ext. M1, the settlement on periodical transfer is relevant. The wording used in the exemption clause is that female employees who are of the age of 50 years and above are exempted from transfer. So to be eligible for exemption it is enough that the employee completed the age of 50 years and not necessary that she has crossed the age of 50 years. The date of birth of the concerned employee is 12.05.1962. The date of the order of transfer is 11.05.2012. As on 11.05.2012 the employee has completed the age of 50 years. 12.05.2012 is the date on which she enters the 51 year of her age. It is not the date on which she completes 50 years of age. So 11.05.2012 itself can be taken as the date on which the concerned employee has completed the age of 50 years. This being so, she was not liable to be transferred as if she has completed the age of 50 years on that date. The concerned employee is entitled to be re-transferred to the place where she was originally working. She seems to have been working in the Corporate Office when she was under the orders of transfer. If there is vacancy in the Corporate Office, she is to be transferred to the Corporate Office itself. In the absence of vacancy in the Corporate Office she can be transferred to a branch in the closeby area. Accordingly, an award is passed as follows:

> "The Respondent is directed to re-transfer its employee, Kanakavalli to the Corporate Office, within a month, if vacancy is available. In the absence of vacancy in the Corporate Office, the Respondent is directed to transfer her to a branch in the closeby area" within the same period".
>
> The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th April, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	05.06.2012	Union letter to ALC, Chennai IBEA/GEN/167/2010-13 raising an Industrial Dispute
Ex.W2	11.05.2012	Periodical transfer order to Smt. Kanakavalli issued by HHh HO:HRM Dept. Indian Bank to HO:IRRD
Ex.W3	14.05.2012	Letter from Smt. Kanakavalli to HO:HRM Deptt.
Ex.W4	04.07.2001	HO:Personnel Deptt. Circular PRNL:22/2001-02-Transfer of Clerical Staff at Periodical intervals with Annexure
Ex.W5	11.06.2012	Asstt. Labour Commissioner letter No. M.7/12/2012-B-3 invoking Section 33
Ex.W6	11.06.2012	IBEA (Tn letter IBEA/GEN/169/2010-13 to HO:HRM Deptt. requesting not to relieve the employee on Transfer
Ex.W7	28.06.2012	Indian Bank, HO:HRM letter to Asstt. Labour Commissioner, Chennai on transfer
Ex.W8	09.07.2012	Union letter IBEA/GEN/173/2010-13 in reply to the above letter by Management of Indian Bank
Ex.W9	26.11.2012	Our Union letter IBEA/Gen/190/2010-13 in continuation of above letter dated 09.07.2012

On the Management's side

Ex.No.	Date	Description
Ex.M1	29.06.2001	Settlement and periodical transfer for clerical staff between Indian Bank and the federation of Indian Bank Employees Union u/r Section 18(1) of ID Act
Ex.M2	30.04.2012	Note from Corporate Office HRM Department, Chennai on periodical transfer of award staff
Ex.M3	-	Annexure-A – Transfer of Clerks from Chennai City Branch to Kancheepuram Zone
Ex.M4	18.06.2012	Note from Corporate Office, HRM Department
Ex.M5	10.07.2012	Communication from Ministry of Labour – Government of India to Bank
Ex.M6	20.10.2012	Letter from Corporate Office, Chennai to ALC(C), Chennai
Ex.M7	-	Transfer order issued SR Subramaniam from ZO, CBE to Vagarayampalayam Branch
Ex.M8	-	Transfer order to issued to Ms. Santhakumari from Villivakkam to Kolathur Branch

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1380.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 73/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/4/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 73/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30-4-2014.

[No. L-12012/4/2013-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 7th April, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 73/2013

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman]

BETWEEN

The General Secretary Indian Bank Employees Union 6, Moore Street, Mannady Corner Chennai-600001	:	1st Party/ Petitioner Union

AND

The Zonal Manager Indian Bank Zonal Office AVR Towers, 4, Bharathi Road Cuddalore-607001	:	2nd Party/ Respondent

Appearance :

For the 1st Party/ Petitioner Union : Sri J. Thomas Jeyaprabhakaran, Authorized Representative

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/4/2013-IR(B-II) dated 12/17.06.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank in imposing a punishment of Dismissal without Notice to Sri B. Nakkiran, Sub-Staff is legal and justified? What relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 73/2013 and issued notices to both sides. The petitioner has entered appearance through Authorized representative and the Respondent through counsel and filed their claim and counter statement respectively. The petitioner has filed rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement in brief are as below:

The Petitioner Union has raised the dispute regarding the dismissal of Nakkiran, a member of the Union. Nakkiran had joined the services of the Respondent Bank as a temporary staff in 1980 and was absorbed in regular services in 1991. He had rendered service for 3 long decades. While working in Cuddalore Main Branch of the Respondent Bank as Sub-Staff, he was issued a Charge Sheet dated 12.11.2009 and was placed under suspension also. It was alleged in the Charge Sheet that on 12.10.2009 at around 11.00 AM he had clandestinely removed and stealthily taken cash amounting to Rs. 9,000 from the Cash Cabin of Santhakumari, Chief Cashier of the Bank and had committed theft of the said amount, that he had withheld the amount for the entire day and had returned it only at 06.00 PM when his act was detected. The reply given by Nakkiran was found unsatisfactory and a departmental enquiry was conducted. Nakkiran, the concerned worker was found guilty of the charges and the punishment of dismissal without notice was imposed on him. The Appellate Authority had dismissed the appeal preferred by the worker against the order of dismissal. The dispute is raised accordingly. The allegation made against the concerned worker is without any basis. On 12.10.2009, he was working in the Currency Chest attached to Cuddalore Main Branch. The chest is situated in the ground floor of the building and the branch is housed in the first floor. The concerned worker had approached the Chief Cashier, Santhakumari at her cash cabin, handed over two notes of Rs. 500 denomination and had requested her to exchange it for one used section of Rs. 10 denomination to enable him to exchange the section for

fresh currency at the chest. When he was standing at the cabin door, waiting for the Cashier to exchange the notes he had a call from one of the customers. In the meanwhile the Cashier handed over certain sections of notes telling something to him. Since he was pre-occupied with the phone he received the amount and immediately left the cash department. On reaching the ground floor he realized that he had been handed over Rs. 10,000 instead of Rs. 1,000. He presumed that the Cashier had given the additional cash of Rs. 9,000 for exchanging for fresh currency at the chest. By noon he exchanged fresh sections from the chest. He got four sections of the same denomination. The concerned worker was the only Sub-Staff in the Currency Chest on the day. He had managed the entire work at the chest single handedly. He kept the sections inside his pant pocket and resumed his work intending to hand over the sections as and when he went to the first floor. However, he totally forgot about the currency exchanged and kept with him. By 05.00 PM, while crossing the cash department he found the cash peon behind the cash counter. Normally the cash department will be closed by 04.30 PM. He enquired with the peon and was told that there was a shortage of Rs. 9,000 in the Cashier's Counter. The concerned worker remembered about the amount of Rs. 9,000 exchanged for fresh currency. He handed it over to Ganesan, the Shroff who was sitting at the Chief Cashier's cabin expressing regret. After this the cash was closed and the cash box was deposited in the chest. The concerned worker had not committed any theft. The amount of Rs. 9,000/- was handed over to him by the Chief Cashier. There is no justification for the punishment imposed on the concerned worker. The worker is entitled to be reinstated in service with back wages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows :

The concerned workman was working as Sub-Staff in the Currency Chest attached to Cuddalore Main Branch of the Respondent Bank. On 12.10.2009 he had approached Santhakumari, the Chief Cashier for exchange of one Rs. 10/- section by tendering two pieces of Rs. 500/- denomination . She had given a Rs. 10/- section accepting the two Rs. 500/- notes. At the time of closing she had found a shortage of Rs. 9,000/-. She had counted the amount and verified the vouchers with the help of Ravindran and Ganesan, two other Staff. Ravindran had verified the cash handed over by Cuddalore branch to the Currency Chest. Murugesan, a staff of Currency Chest had told him that notes of Rs. 10/- denomination were taken in exchange by the concerned workman on that day. It transpired that the concerned workman who approached the Chief Cashier for exchanging two pieces of Rs. 500/- notes had removed two sections of Rs. 20/- and one section of Rs. 50/- and had exchanged one section of Rs. 50/- and two sections of Rs. 20/- for nine sections Rs. 10/-. When Ravindran verified with Murugesan of Currency Chest about the exchange the concerned workman went to the Cashier, Santhakumari and gave Rs. 9,000/- that was removed by him from the Cash Cabin. When investigation was conducted the concerned workman had admitted that he had taken the cash of Rs. 9,000/- for exchange, that he had kept the same with himself and that on getting exposed he had handed it over to the Chief Cashier. A Charge Sheet was issued to him for the misconduct of removing the amount of Rs. 9,000/- from the Cash Cabin and for keeping the amount with him for the entire day. In the enquiry conducted the Enquiry Officer has found that the charges against the workman are established. On the basis of the report of enquiry the workman was dismissed from service. The workman is not entitled to any relief.

5. The petitioner has filed a rejoinder to the Counter Statement denying the allegations made therein and also reiterating the case in the Claim Statement.

6. The evidence in the case consists of the oral evidence of WW1 and documents marked as Exts.W1 to Ext.W19 and Exts.M1 and Ext.M2.

7. The points for consideration are:

(i) Whether the action of the Respondent in imposing the punishment of dismissal from service without notice on B. Nakkiran, the concerned workman is legal and justified?

(ii) What is the relief, if any to which the concerned workman is entitled?

The Points

8. The Indian Bank Employees Union has raised the dispute espousing the cause of B. Nakkiran, a Sub-Staff of the Respondent Bank. Nakkiran the concerned workman has joined the services of the Respondent Bank as temporary staff and was absorbed in the regular service of the bank in 1991. He was working as Sub-Staff at Cuddalore Main Branch on 12.10.2009 when the incident resulting in his dismissal occurred.

9. The Cuddalore Main Branch of the Respondent Bank has a currency chest attached to it. The chest is housed in the ground floor while the branch is housed in the first floor of the same building. On 12.10.2009, the day in question the concerned workman was on duty in the Currency Chest. It is an admitted fact that he had approached Santhakumari, the Chief Cashier of the Branch for exchange of two notes of Rs. 500/- denomination for a Rs. 10/- section. In the evening, at the time of closure of the account, the Chief Cashier noticed shortage of Rs. 9,000/- in the account. She verified the account with the help of two other members. One of the staff went to the Currency Chest and verified and counted the notes that were deposited in the chest. While doing this, he came to know from the Cashier of the Chest that the concerned

workman had exchanged old notes for fresh notes from the chest. According to the Respondent, when the concerned workman came to know that the fact of his exchanging notes had been revealed he panicked and handed over Rs. 9,000/- to the Chef Cashier.

10. According to the Chief Cashier she had not handed over any cash other than a section of Rs. 10/- notes to the concerned workman in exchange for two pieces of Rs. 500/-. On the other hand according to the concerned workman while a section of Rs. 10/- notes had been handed over to him, the Cash Cashier had given him Rs. 9,000/- more. He noted it only on reaching the chest which was his place of duty. He assumed that this might have been given to him for exchange with Rs. 10/- Sections. Accordingly, he had exchanged them and kept them with him intending to hand over the notes to the Cashier as and when he went to the first floor, to the branch. However, he totally forgot about this since he was pre-occupied with his duty and only in the evening when there was a hustle and bustle in view of the shortage noticed at the Chief Cashier's Section he remembered about the cash that was kept with him and immediately handed over the amount to Ganesan who was sitting alongwith the Chief Cashier trying to solve the problem. The concerned workman was suspended and a Charge Memo was issued to him. On finding the reply given by him unsatisfactory, the Respondent proceeded with the departmental enquiry. Before the enquiry an investigation was conducted by the Bank. The statements of the persons related to the incident were recorded by the Investigation Officer. The evidence given by the Management witnesses in the departmental enquiry is based on the statements given by them to the Investigation Officer. During their examination in the enquiry proceedings they have asserted that they have given statements. The statements were marked through the concerned witnesses.

11. MW1 examined in the enquiry proceedings was the Chief Manager of the Cuddalore Branch at the time of the incident. He was on leave on the date of the incident. He was informed about the incident by the Assistant Branch Manager. He had informed the matter to the Circle Office on the basis of this. The copy of this letter by the Manager is seen marked as Ext.W5. This witness has nothing to do with the incident and was not involved in the incident at all, but has knowledge of the same only on the basis of information given by the Assistant Branch Manager. MW2 is the Vigilance Officer who has conducted the investigation. Ext.W6 is the report given by him on the basis of his investigation. He has stated in his report that he had questioned the concerned workman and he had told him that he had taken the cash of Rs. 9,000/- for exchange and had inadvertently kept the same with himself and had handed it over to the Chief Cashier on getting exposed. He had also questioned the Assistant Branch Manager who was in-charge of the Manager who was on leave, Murugesan who was in-charge of the Currency Chest, Ravindran who had assisted the Chief Cashier in verification and counting on noticing the shortage and also Santhakumari, the Chief Cashier, apart from others.

12. On going through the evidence in the enquiry proceedings, it could be seen that the witnesses who are actually involved in the incident are only MW8, the Chief Cashier, MW3, the Officer-in-Charge of the Currency Chest and MW6 who assisted the Chief Cashier on noticing the shortage. Then there is also the evidence of MW2 who furnished his report on investigation. On the side of the workman the evidence of Ganesan who assisted Chief Cashier in counting and a Peon are there.

13. The statement given by MW8, the Chief Cashier has been marked in the enquiry proceedings. The witness has stated that what is stated in her statement is true. According to her, by 11.30 AM, the concerned workman had approached her, handed over two pieces of Rs. 500/- notes and had asked for one Rs. 10/- section. When she asked about the purpose he had informed her that he wanted to exchange it for fresh currency. He had given the Rs. 10/- section and had made necessary changes in the system. During the time he was found talking with somebody by his mobile phone. At 12.00 noon when customers were less, she started verifying the cash of lower denominations. She found difference of two sections in Rs. 20/- denomination. She was not able to proceed with the verification since more customers reached the counter. By 03.35 PM she proceeded with the cash adjustment work and initially noticed shortage of two sections in Rs. 20/- denomination. She sought the help of Ganesan, another staff who was examined as DW2 in the enquiry. They together proceeded with the verification and found that there was shortage of one section in Rs. 50/- denomination also. Thus there was shortage of Rs. 9,000/- in total. By then MW6 Ravindran who was working in the loan section also reached there. He was informed of the shortage. He went to the Currency Chest to verify the cash that was already sent to the Chest. After this, the workman reached there and placed Rs. 9,000/-, one section of Rs. 50/- denomination, two sections of Rs. 20/- denomination and told them that he had forgotten to give the amount. MW6, came back from the Currency Chest by this time and informed that the concerned workman had exchanged notes for fresh currency from the Currency Chest.

14. DW2 in the enquiry proceedings is Ganesan who had been assisting the Chief Cashier to do the counting when the shortage was noticed by her. He had stated that on his checking the vouchers, he had noticed the difference to be of Rs. 9,000/-. In the meanwhile, MW6 also had come there and he was also informed of the shortage. DW2 had asked MW6 to verify the cash remitted

at the Currency Chest to find out if any excess was there. After some time, the concerned workman approached him and told him that he had come to know from DW1 that there was difference in the cash, that the Chief Cashier had given amount for exchange and he had forgotten to return it. There is also the evidence of DW1 who was working as Cash Peon on that day. According to him, while he was standing in the next counter the concerned workman had come to him and he had told him of the shortage in the Chief Cashier's account and the workman had told him that he got the amount for exchange of fresh currency from the Chief Cashier but forgot to return the amount. Then he had approached DW2 who was attending the adjustment work and had given the amount of Rs. 9,000/- to him.

15. DWs 1 and 2 seem to have been examined to show that actually the concerned workman came to know about the shortage when he came to the cash counter, that he remembered about the amount only at that time. There is no dispute regarding the fact that the concerned workman had returned the amount at the cash counter much after shortage was noticed and the Chief Cashier had sought the help of DW2 and MW6 for cash adjustment and MW6 had gone to the Currency Chest to verify if any excess payment was made at the Currency Chest.

16. One of the arguments that had been advanced on behalf of the workman is that it is probable that the Chief Cashier had handed over the amounts in two sections of Rs. 20/- denomination and one section of Rs. 50/- denomination to the concerned workman alongwith one section of Rs. 10/- denomination in exchange for two notes of Rs. 500/- denomination and she might have forgotten about it. I do not think it is possible that the Chief Cashier would have handed over the sections unconsciously. During the examination of Chief Cashier as MW8, she has given details of the manner in which the trays containing notes of each denomination are kept. She has stated that she will be keeping Rs.1,000/-, Rs. 500/- and Rs.100/- denominations in front of her, on the cash table. Below the drawer in a plastic tray, she used to keep Rs. 10/- denominations. In trays, near her right leg, she will be keeping the denominations of Rs. 20/-, Rs. 50/- and Rs. 5/-. Since the notes of difference denominations are kept in different trays, it is not possible that she would have handed over two sections of Rs. 20/- and one section of Rs. 50/- alongwith one section of Rs. 10/- to the concerned workman. The plastic tray with Rs. 10/- denomination is in front of her and the trays with the denominations of Rs. 50/-, Rs. 20/- and Rs. 10/- are on her right side. While she is taking out one section of Rs. 10/- in exchange for two Rs. 500/- notes there is no necessity for her to go to the trays containing notes of other denominations. So the argument advanced on behalf of the petitioner that she might have unconsciously handed over three more sections, two sections of Rs. 20/- denomination and one section of Rs. 50/- denomination could not be accepted. Again, if the explanation given by the workman is accepted, MW8 had given the notes not unconsciously but fully aware of what she is doing. Ex.W2 is the explanation given by the workman in answer to the memo that was given to him regarding the incident. What he has stated in this is that MW8 had handed over one section each of Rs. 50/- and Rs. 10/- denomination and two sections of Rs. 20/- denomination telling him something. According to him, his attention was concentrated on a phone call that came to him and he did not properly grasp what the Chief Cashier has told him and he has left the cabin. According to him, he was under the impression that the Chief Cashier had handed over the three sections to get exchange from the Currency Chest with new notes. If this case of the workman is correct, the Chief Cashier had given him some instruction also when she handed over the notes. If this is the case she must have handed over the sections of Rs. 20/- and Rs. 50/- denominations in which case definitely she would have remembered about the sections at least when she had noticed shortage at the time of cash adjustment.

17. The Authorized Representative of the petitioner has been arguing with reference to the diagram of the cash counter of the Chief Cashier that it would not have been possible for the workman to remove the notes without the knowledge of the Cashier also. He has also referred to the version of the Cashier that the workman was standing at the door of the counter asking for one section of Rs. 10/- notes. The workman had admittedly approached the Chief Cashier not from the front portion of the counter where customers usually approach the Cashier but from behind through the entrance of the Cashier's Cabin at the back side. According to the Authorized Representative, the chair of the Chief Cashier is almost barricaded on all sides and it would not have been possible for the workman to remove the notes. He has referred to Ex.W7 showing the diagram of the cabin of the Chief Cashier. On the right side of the Cashier almost parallel to her Chair is the counting machine and the two trays containing notes are placed by her nearby to the counting machine, on the side of her right leg. According to the Authorized Representative, because of the counting machine it would not be possible for anyone to reach the trays and remove the notes. I am unable to accept this argument advanced by the Authorized Representative. It has come out during evidence that the distance from the door to the chair of the Cashier is just two feet. This means the chair of the Cashier is only at arm's length. The trays containing the notes are also almost at this distance. There is space in between the counting machine and the chair of the Cashier. The Chief Cashier is unsuspecting because it is the staff of the bank itself who had approached her and is seeking exchange. If a person wants to remove notes from the trays there will not be any difficulty to do it. One can do it

in the split of a second conveniently when the Cashier's attention is on the other side. The Chief Cashier has stated that she has obtained the two Rs. 500/- notes and had given one section of Rs. 10/- note in exchange without turning herself, but by just turning her neck slightly. One can conveniently reach his hand through the space in between the chair and the counting machine and lift the sections of notes. It is worth mentioned that the missing sections were of Rs. 20/- and Rs. 10/- denomination kept on the right side.

18. According to workman he did not grasp what the cashier has told him. Yet he did not go back to her or ask her why three sections of notes apart from one section in exchange were handed over to him. His case is that he assumed that those sections might have been handed over to him for exchange for fresh notes. However, his version to MW3 from whom he had got the sections exchanged was different. MW3 has stated that the workman had told him that he is exchanging the notes for his personal purpose. So far as the notes of Rs. 10/- denominations are concerned this answer must be correct. However, this should not have been the answer regarding notes of Rs. 20/- and Rs. 50/- denominations. The Authorized Representative has been arguing with reference to some correction made in the statement given by MW3 to MW2 that MW2, the Investigating Officer was biased and had not recorded the statement properly. In the statement of MW3, the sentence "I asked him specifically for whom he is exchanging" is seen scored off. Then there is a sentence that the workman voluntarily told him that the notes are for his personal use. In fact even before the sentence that is scored off it is seen recorded that the workman had told him that the notes are for his personal use so the scored sentence is not of any consequence. The fact is that the workman had told MW3 whether voluntarily or not, that the notes are for his personal use. This would show that at that time he had refused to reveal that he was exchanging notes that were handed over to him by the Chief Cashier. What DW1 has stated is that the workman had taken out the notes from his pant pockets and had handed it over to DW2. The counsel for the Respondent has referred to Ext.W5, the report of the Branch Manager wherein it is stated that the workman had kept the notes in the locker allotted to him and had forgotten to give it back. According to the Authorized Representative, there is no case at all that the notes were kept in the locker. He has pointed out that the Branch Manager had no personal information of the incident as he was on leave on that particular day and that the report given by him is based on the information given by the Asstt. Branch Manager and that the statement of Asstt. Branch Manager does not contain a statement that the workman had told him that the notes were kept in the locker. If the notes were in the locker, the workman had taken them out and had kept them in his pocket before he went to the first floor where the branch was functioning. If it was in the locker at least when he had taken the notes out he would have remembered that the notes are to be given back at the Cash Counter. However, he had not done so. If the notes were all along in the pant pocket of the workman as is the case put forth by the Authorized Representtive R, those notes themselves would have been a reminder to the workman that those are to be given back. One section of Rs. 50/- notes and two sections of Rs. 20/- notes mean there will be 400 pieces of notes in the pocket of the workman and this certainly would be slightly heavy. So that itself should have acted as a reminder to the workman. But he never thought of returning the amount to the Chief Cashier until the Chief Cashier was sweating and making all the efforts to find out how the shortage of Rs. 9,000/- has occurred. At least by 5'O clock when closing time came, he should have thought about it in the normal course.

19. It has been argued by the Authorized Representative that the workman was not aware of the shortage or the search made at the Currency Chest and it was only when he reached the Cash Counter and DW1 informed him about the shortage he realized that he was having the notes with him. Referring to the evidence of certain witnesses, the Authorized Representative has tried to make out that the concerned workman was not at the currency chest or at the Cash counter when the Chief Cashier was trying to find out why the deficit has occurred. MW3 who was the Working Officer-in-charge of Currency Chest on that day had stated that MW6 had come to him around 0430PM and informed that there was cash shortage. He had stated that while he was in the currency chest inside the sorting hall, this information was given by MW6 and that Arumugam the Asst. Manager and MW6 and other clerks were present in the sorting hall at the time. According to the Authorized Representative, since the witness has not stated that the concerned workman was present at the place it is to be presumed that he was not there at the time and he was not aware of the same. The Authorized Representative has also referred to the evidence of MW6 in this respect. MW6 was asked if the concerned workman was present at the branch when he returned from the chest and he has answered that he was not there. Thus according to the Authorized Representative there was no occasion for the workman to know about the shortage before DW1 told him about it. In fact it is not disputed that MW6 had gone to the Currency Chest and had come to know from MW3 about the exchange of notes made by the workman and by the time be came back to the branch, the workman had returned the money. Probably he might have left after this. These aspects would not show that the workman was not aware of the shortage or about the visit made by MW6 to the chest to make the verification. If the workman was not at the chest or at the branch, where was he on that evening? He was on duty at the chest on that day and was supposed to be at the chest until the chest was closed.

The chest is at the ground floor and the branch is at first floor. In the normal course, there was no necessity for him to visit the branch on that evening before he left the office.

20. Much ado was made by the Authorized Representative regarding the statement of MW6 that he had twice visited the chest in connection with the shortage and that he had asked MW3 if anyone had exchanged notes. On going through the evidence and the statements it could be seen that there is not much basis for this. During his examination, MW6 has stated that he has gone to the chest in connection with the incident only once and that when he informed MW3 that the shortage was of Rs. 9,000/- and that the denominations are of Rs. 20/- and Rs. 50/-, MW3 had recollected that the concerned workman had exchanged notes and had informed him so. However, in his statement his version is that he went to the chest and verified and came back to the branch and was told that the shortage is of denominations of Rs. 20/- and Rs. 50/-, again went to the chest and asked MW3 if anyone had exchanged notes for Rs. 9,000/- and MW3 had told him about the exchange made by the concerned workman. The stress given by the Authorized Representative is on the fact that it is the case of MW6 asking MW3 if anyone had exchanged notes of the missing denominations and not a case of MW3 informing him about the incident when he was told about the shortage. However, on going through the statement of MW3 itself, it could be seen that the version of MW3 at the time itself is that when MW6 told him about the denominations in which shortage has occurred he recollected that the workman had exchanged notes of the very same denominations and had informed MW6 about it. Even before MW6 went back to the branch with this information, the concerned workman had reached the branch, made the pretence of an enquiry with DW1 about what is happening and had returned the amount. So the only possibility is that the workman who was at the chest itself, somewhere in the surrounding area, though not inside the sorting hall, where the conversation between MW3 and MW6 had occurred became aware of the same, got panicked and decided to return the amount on the pretext that he had forgotten to give it back.

21. Another argument that is advanced by the Authorized Representative is that if the workman had consciously removed the amount form the cabin of the Cashier it is unlikely that he would have exchanged them for fresh notes. He would not have thought that an enquiry would have been made at the chest. So this by itself could not be interpreted as absence of mal- intention on the part of the worker.

22. The Management has given all the evidence available. Regarding the case of the workman, there is only the explanation given by him that it has all taken place since he forgot about the notes that were handed over to him by the Chief Cashier. But the workman had not thought it necessary to get into the witness box to put forth his case. He seems to have been reluctant to withstand the cross-examination that he would have to undergo.

23. It could be seen that the Management has placed all possible evidence in the enquiry proceedings. The Enquiry Officer has assessed the evidence and arrived at a probable conclusion regarding the incident. No perversity could be detected in the findings of the Enquiry Officer. So this Tribunal is not required to interfere with the findings entered by the Enquiry Officer.

24. Now, coming to the matter of punishment, the workman was given the punishment of dismissal without notice. It has been pointed out by the Authorized Representative that the workman has been working as Sub-Staff with the Respondent in the year 1980 and was absorbed into the regular service in 1991 and has a service of almost three decades. There is no case for the Respondent that any proceedings had been initiated against him earlier. It is to be pointed out by the Authorized Representative that in such cases the Management had imposed the punishment of voluntary retirement earlier. When the long service of the workman and other aspects are taken into account, I am of the opinion that the punishment of Compulsory Retirement from service will meet the ends of justice so I am inclined to modify the punishment to one of Compulsory retirement. Accordingly, an order is passed as follows:

The punishment imposed on the concerned workman is modified and the punishment of Compulsory Retirement from service is imposed on him w.e.f. 06.12.2006.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th day of April, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Wtnesses Examined

For the 1st Party/ Petitioner Union : WW1, Sri B. Nakkiran

For the 2nd Party/ Management : —

Documents Marked

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	02.11.2009	Charge Sheet issued to Sri B. Nakkiran
Ex.W2	11.11.2009	Reply to the Charge Sheet
Ex.W3	15.03.2010	Letter from Presenting Officer furnishing list of documents and witnesses

Ex.W4	25.03.2010	
	26.03.2010	Proceedings of the Departmental
	23.04.2010	Enquiry
	27.04.2010	
Ex.W5	20.10.2009	Letter from Cuddalore Main Branch'
Ex.W6	26.10.2009	Report of the Investigating Officer
Ex.W7	-	Plan showing the chief cashier cabin at Cuddalore Main Branch
Ex.W8	21.05.2010	Presenting Officer's brief
Ex.W9	05.06.2010	Defence summing up
Ex.W10	21.10.2010	Enquiry Officer's findings
Ex.W11	13.11.2010	Comments on Enquiry Officer's findings
Ex.W12	06.12.2010	Second Show Cause Notice
Ex.W13	14.12.2010	Reply to the Second Show Cause Notice
Ex.W14	15.12.2010	Minutes of the personal hearing
Ex.W15	21.01.2011	Speaking orders of the DA
Ex.W16	03.03.2011	Appeal to the Appellate Authority
Ex.W17	14.09.2011	Proceedings of the personal hearing held by Appellate Authority
Ex.W18	27.09.2011	Speaking orders of the Appellate Authority
Ex.W19	09.11.2011	ID under Section 2(a) of ID Act

On the Management's side

Ex.No.	Date	Description
Ex.M1	24.03.2012	Reply from Indian Bank to ALC ©, Chennai to the 2A petition of Nakkiran
Ex.M2	31.01.2011 to 07.07.2011	SB Account No. 410539423 showing crediting of PF/Gratuity dues in the account of Nakkiran on 01.06.2011.

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1381.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/25/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 30/4/2014.

[No. L-12011/25/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 7th April, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 34/2010

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman]

BETWEEN

The General Secretary : 1st Party/
Indian Bank Employees Association Petitioner Union
No. 17, Ameerjan Street, Choolaimedu
Chennai-600094

AND

The General Manager : 2nd Party/
HO HRM Department, Indian Bank Respondent
No. 66, Rajaji Salai
Chennai-600001

Appearance :

For the 1st Party/ Petitioner Union : M/s V. Ajoy Khose, Advocate

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment, *vide* its Order No. L-12011/25/2010-IR(B-II) dated 24.09.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank in imposing the punishment of Compulsory Retirement to Sri K. S. Kalyani Kumarasamy is legal and justified? What relief the concerned workman is entitled to ?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 34/2010 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder after the Counter Statement was filed. During the pendency of the claim, the concerned workman whose cause was espoused by the petitioner died. After this, the petitioner has filed a revised Claim Statement and the Respondent has filed Counter Statement in answer to this also.

3. The averments in the original claim statement in brief are these:

The petitioner is a union registered under the Trade Union Act. It has substantial following among the workmen in the Respondent Bank. Kalyani Kumarasamy, a member of the Petitioner Union was working as Clerk in Villupuram Branch of the Respondent Bank. He was charged with the misconduct of unauthorized absence and the punishment of Compulsory Retirement from service was imposed on him by the Respondent. Kalyani Kumarasamy, the concerned workman had met with an accident in the year 2000. Though he rejoined duty sometime after this incident, his health was in deterioration and he had to be under continuous treatment. He was diagnosed with the problem of Deep Vein Thrombhosis. The Respondent had issued Charge Memo to the concerned worker stating that he was unauthorizedly absent from duty for a period of 62 days from 09.01.2002 to 08.02.2003, for 19 days from 11.07.2003 to 29.07.2003, for 38 days from 07.08.2003 till 13.09.2003 and since 03.11.2003 to the date of the charge sheet. The Respondent conducted an ex-parte enquiry and imposed punishment of Compulsory Retirement on him on 28.02.2006. The mercy petition filed by the concerned workman was rejected by the Management. The concerned workman had approached the High Court of Madras and the High Court had directed the Appellate Authority to dispose his appeal on merits. By order dated 31.01.2009, the Appellate Authority upheld the punishment imposed by the Disciplinary Authority. The concerned workman could not attend the office because of his health condition. The punishment of Compulsory Retirement from service is without any justification. The concerned workman is entitled to be reinstated in service with back wages and other attendant benefits.

4. The concerned workman passed away on 27.05.2011. In the revised Claim Statement filed by the petitioner subsequently the petitioner has requested that a direction should be given to the Respondent to give employment to the wife of the concerned workman on compassionate grounds.

5. The Respondent has filed Counter Statement contending as follows:

The concerned workman was working in the Villupuram Branch of the Respondent Bank. On 10.10.2003, an account holder, Raja had withdrawn Rs. 1,500/- by withdrawal slip. The concerned worker was the teller who made the payment and made entry in the Pass Book showing credit balance of more than Rs. 10,000/-. On 11.11.2003 Raja wanted to withdraw Rs. 8,000/- more and he was told that there is no sufficient amount to the credit of the account. But there was amount in his Pass Book. On verification it was revealed that on 10.10.2003 on which date Rs. 1,500/- was withdrawn, there was another debit of Rs. 7,000/- as per the account. The concerned workman being the teller on that day, he had to be interrogated. However, he has started abstaining from duty without any intimation. The concerned workman had remained absent for 119 days during the period from 09.12.2002 to 19.09.2003. A show-cause notice was issued to the concerned workman. This was returned undelivered. A criminal proceeding has been initiated against the concerned workman. This case ended in acquittal. Charge Sheet was issued to the concerned workman charging him with the misconduct of unauthorized absence. However, the letters sent to him were returned undelivered. Notice of enquiry was published in a vernacular newspaper also. A copy of the enquiry report was also sent to the concerned workman, but this was also returned undelivered. The alleged illness of the workman was only a devise to cover his misdeed on 10.10.2003. The petitioner is not entitled to any relief.

6. In the rejoinder filed, the petitioner has reiterated his case and denied the allegations made by the Respondent. In the revised Claim statement filed by the petitioner, the petitioner seeks to provide employment to the wife of the deceased workman. A counter Statement is filed to the revised Claim Statement also.

7. The evidence in the case consists of Ext.W1 to Ext.W13 and Ext.M1 to Ext.M41. No oral evidence was adduced on either side.

8. The points for consideration are:

(i) Whether the action of the Respondent in imposing the punishment of compulsory retirement on Kalyani Kumarasamy, the concerned workman is legal and justified?

(ii) What is the relief to which the concerned workman is entitled?

The Points

9. Kalyani Kumarasamy, the concerned workman on whose behalf the dispute is raised was working as Clerk in Villupuram Branch of the Respondent Bank. The Respondent had issued a Charge Memo to him stating that he was unauthorizedly absent in four spells, the last spell of absence continuing even at the time of issue of the Charge Memo. The Respondent had conducted an enquiry, found the concerned workman guilty of unauthorized absence and had imposed the punishment of Compulsory Retirement from service. The

appeal later filed by him before the Appellate Authority, was also dismissed. It is consequently that the dispute has been raised by the Petitioner's Association of which he was a member.

10. The Counsel for the Respondent has referred to the documents produced on behalf of the Respondent and has argued that the concerned workman had committed the misconduct of withdrawing money from an account holder and misappropriating the amount. It has been pointed out by the Counsel for the Petitioner that this aspect is not a subject matter of the Charge Memo at all. No proceedings had been initiated against the concerned worker for such a misconduct. This being the case, as pointed out by the Counsel, the concerned workman could not be referred to as the person who has committed a misconduct of misappropriation by withdrawal of amount from the account of a customer. This allegation made against the concerned workman could not be taken into account while considering the charge of unauthorized absence made against him also.

11. The case of the Respondent is that the concerned workman was absent without any intimation to the Bank for 62 days from 09.1.2002 to 08.02.2003, for 19 days from 11.07.2003 to 29.07.2003, for 38 days from 07.08.2003 to 13.09.2003 and was in continuous absence for 270 days from 03.11.2003 to 29.07.2004, the date on which charge sheet was issued to him. The documents produced on behalf of the respondent would show that several communications were issued to the concerned workman asking him to appear and defend the enquiry proceedings. However, he did not participate in the enquiry. According to the Respondent, the letters sent to the concerned workman bringing to his attention his unauthorized absence were all returned undelivered. At the same time as stated in the Counter Statement itself he had addressed a letter to the Circle Office from his address in his native place seeking a transfer to Chennai for the purpose of taking treatment for his illness. Since the notices of enquiry that were sent to the concerned workman also were returned undelivered notice was published in a vernacular newspaper. After this also he did not appear and enquiry was conducted in his absence. The enquiry report was also sent to the concerned workman's address, but was returned undelivered. A Show Cause Notice issued to him proposing punishment of Compulsory Retirement also met without any response. This was followed by a paper publication advising him to appear for personal hearing. It was after this the concerned workman was awarded the punishment of Compulsory Retirement for three of the charges and censure for one charge. Publication of the punishment was also made in a daily newspaper.

12. It is a fact that the concerned workman did not respond to the notices sent and did not attend the enquiry proceedings. The documents pertaining to the enquiry proceedings including the copies of Attendance Registers produced by the Respondent would show that the concerned workman was absent all along during the period in question. In fact there is no case for the petitioner also that the workman had been attending duty in the period given in the Charge Sheet as the period of unauthorized absence.

13. The argument that is advanced on behalf of the workman is that his absence was not willful. The case put forth is that the workman was not in a position to attend the office because of his illness. He was not in a position even to participate in the enquiry proceedings. The concerned workman had died on 27.05.2011, during the pendency of the dispute.

14. According to the petitioner the concerned workman met with a bus accident in the year 2000. It was only a miracle that he survived the accident. Though he had rejoined duty sometime after the accident and continued to attend his duty, his health had deteriorated and he had gone on leave for long periods because of his ill-health. According to the petitioner, he was diagnosed to be suffering from the problem of Deep Vein Thrombhosis (DVT) and was going on leave frequently, even before the alleged unauthorized absence.

15. The petitioner has given a list of hospitals in which the concerned workman had undergone treatment, giving the details of the treatment also. This is marked as Ext.W12. The fact that the concerned workman had met with an accident and that he was undergoing treatment was not much disputed by the Respondent. The document marked as Ext.W11 would show that a National Identity Card and Pass Book with Disability Certificate was issued to the concerned workman by the Government of Tamil Nadu. It is also revealed from Ext.W13 containing the several leave applications submitted by the workman to the Respondent that even prior to the period of alleged absence, he was frequently availing leave on the ground of illness and his leave applications were being approved by the Respondent also. As could be deciphered from one of the leave applications included in Ext.W13 he was on leave for 88 days from 18.04.2000 to 14.07.2000. The reason for leave is given as Femur Fracture. The name of the doctor who was treating the workman also is given in the application. The leave was recommended. This was followed by several such applications. As seen from Ext.W13, he has availed leave for 9 days from 23.07.2002 to 31.07.2002 on account of Varicose Vein Ulcer. His leave application for the period from 07.08.2002 to 19.09.2002 for 53 days for the same reason was also recommended. There is still another application for leave from 08.11.2002 to 14.11.2002 which was also recommended. The next is the application for 64 days from 07.12.2002 to 08.02.2003. Yet another application is for the period from 19.05.2003 to 22.05.2003. This was followed by subsequent applications also.

16. The case of the Respondent is that the workman's absence during the period for which Charge Memo was issued was unauthorized for the reason that he has not given any intimation to his office or has submitted any application for leave also. However, it is seen from Ext.W13 that at least for the first charge of absence for 62 days, he has submitted application. Ext.W13 (Page-18 of the typed set) contains an application for leave for 64 days from 07.12.2002 to 08.02.2003. This leave is seen recommended by the Branch Manager also. The stand of the Respondent is that his leave was not sanctioned. The second unauthorized absence is said to be of the period from 11.07.2003 to 29.07.2003, however in between 08.02.2003 and 11.03.2003 also leave applications are seen submitted as seen from Ext.W13. Though the document would not show if leave was recommended or not, it is to be presumed that leave was given, or this period would have been counted as period of unauthorized absence. I have referred to the above leave applications in detail only to mention that there is basis for the case of the workman that consequent to the accident he was suffering from continuous ailment, making it difficult for him to attend the office frequently. Even from the document produced by the Respondent it could be seen that he was on authorized leave for a long time. Ext.M8 and Ext.M9 which intimates the workman about his unauthorized absence since 03.11.2003 states that he was on leave on loss of pay for 278 days.

17. The counter statement of the Respondent refers to a communication from the workman asking for transfer to Chennai to enable him to have effective treatment for his ailments. This letter seeking transfer was sent by the workman on 17.12.2004, after the Show Cause Notice was issued to him. The letter which is marked as Ext.M17 states in detail about the plight of the workman starting from the road transport accident he met with in April 2000. He has stated in this that he had undergone interlocking nailing in his left leg from a hospital at Coimbatore. He has further stated that as a consequence of the surgery he is suffering from Deep Vein Thrombhosis making it difficult for him to sit and hang his left leg for more than two hours. He has requested the Respondent to permit him to continue on leave to proceed with his treatment. He has, by the same letter, also requested for a transfer to Chennai temporarily for the purpose of treatment. However, the Respondent has not heeded to this. Ext.W3, the letter written by him to the Respondent on 21.12.2005 would show that he was aware of the disciplinary proceedings that has been initiated against him. In this letter he has stated that he is not in a position to move from the bed due to swelling and unbearable pain on both legs. He has stated that he requires help even to attend the call of nature. He has assured in the letter that he is ready to attend the enquiry on recovering his health. He has sought time for attending the enquiry. It could be seen that in spite of all this, the enquiry was conducted in his absence and a verdict of guilt was pronounced against him. The very fact that the workman died on 27.05.2011 would show that he continued to be ill and had died on account of his illness, in all probability.

18. In the circumstances referred to above, can the absence of the workman be treated as unauthorized? The Enquiry Officer has not considered whether the absence of the workman was willful or not. On the basis of the evidence given by the Manager of the Bank, the Enquiry Officer has concluded that the absence of the workman was without any previous permission or any intimation and therefore it is unauthorized absence. The further question whether there was any reason for the absence, whether the workman was in a position to face the enquiry was not considered by the Enquiry Officer. The Disciplinary Authority has accepted the report, declared the workman to be unauthorizedly absent and had imposed the severe punishment of Compulsory Retirement from service.

19. The Counsel for the Petitioner has referred to the decision of the Apex Court in Krushnakanth Vs. Union of India and Another reported in 2012 3 SCC 178. The Apex Court has held that if the absence of the employee is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful, it was further held. It was also held that in a departmental proceeding if the allegation of unauthorized absence from duty is made, the Disciplinary Authority is required to prove that the absence is willful and in the absence of such finding, the absence will not amount to misconduct. In the decision in Geetaben Rathilal Patel Vs. District Primary Education Officer reported in 2013 7 SCC 182, in which case there was continuous absence of 1360 days due to mental illness, the order of reinstatement was upheld by the Apex Court. In the decision in Bhagwan Lal Arya Vs. Commissioner of Police, Delhi, reported in 2004 (2) LLN 7, the Apex Court has held that where a Police Constable was on leave on medical ground, the punishment of dismissal from service was excessive and disproportionate. In the present case the concerned workman was suffering from ailments which made it impossible for him to attend the enquiry proceedings and face the same. Even though he was absent for a long period his absence could not said to have been willful. Even assuming that for some period his absence was unauthorized it was not willful absence. The Respondent has not attempted to establish before the enquiring authority that the absence of the concerned workman was willful. To this extent the finding of the Enquiry Officer is perverse.

20. In the absence of proof of willful absence, the Disciplinary Authority was not justified in imposing the punishment of Compulsory Retirement on the concerned workman. The workman having died on 27.05.2011, the relief of reinstatement in service is impossible. However, he is to be deemed to have been in service during the period of his absence and continued to be in service until his date of death on 27.05.2011. The workman having exhausted all his eligible leave, I do not propose to grant back wages to him till the date of order by the Disciplinary Authority i.e. 28.02.2006. On the basis of my discussion and finding above, an award is passed on the following terms:

(i) The concerned workman shall be deemed to have been in service till his date of death on 27.05.2011.

(ii) The workman will be entitled to 50% back wages from 28.02.2006 till his date of death.

(iii) The benefits due to the concerned workman as on the date of his death shall be calculated and disbursed to the legal heirs.

(iv) The amount, if any, the workman has already received as pension shall be adjusted towards the amount payable.

(v) Family Pension shall be calculated as if the workman was in service till the date of his death i.e. 27.05.2011.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th day of April, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	26.10.2004	Findings of the Enquiry Officer
Ex.W2	21.12.2005	Second Show Cause notice issued to the 1st Party
Ex.W3	21.12.2005	Explanation to the Second Show Cause Notice
Ex.W4	28.02.2006	Punishment order issued by the 2nd Party to the 1st Party
Ex.W5	04.08.2006	Order in WP No. 27435/2007
Ex.W6	29.08.2008	Appeal filed by the 1st Party before the Appellate Authority
Ex.W7	31.01.2009	Copy of the order rejecting the appeal preferred by the 1st Party
Ex.W8	09.11.2009	2(A) Petition
Ex.W9	19.03.2010	Counter filed by the 2nd Party
Ex.W10	24.09.2010	Copy of the order of reference
Ex.W11	-	National Identity Card and Pass Book with Disability Certificate issued by the Government of Tamil Nadu
Ex.W12	-	List of Hospital in which the deceased Kalyani Kumarasamy took treatment
Ex.W13	-	Leave Applications given by the deceased workman on various dates

On the Management's side

Ex.No.	Date	Description
Ex.M1	2000 April 2003 Feb.	Pass Book of SB A/c No. 28873 of P. Raja in Villupuram Branch
Ex.M2	11.11.2003	Report of Branch Manager, Villupuram Main Branch – Regarding fraudulent debits of Rs. 7,000/- in P. Raja's SB A/c No. 28873 – with a partly torn slip
Ex.M3	16.12.2003	Report of Branch Manager, Villupuram Main Branch to Inspector of Police – Reg. missing of withdrawal slip for payment of Rs. 7,000/- from the voucher bundle of 10.10.2003.
Ex.M4	17.12.2003	Complaint of P. Raja – SB A/c Holder 28873 to Branch Manager, Indian Bank, Villupuram (In Tamil) SB A/c No. 28873
Ex.M5	21.11.2003	Letter from AGM-Vigilance to C.V.O. & GM (VSG), HO, Chennai enclosing report on the fraud by Circle Head, Puducherry to Vigilance C.O., Chennai
Ex.M6	20.01.2004	Investigation Report by Vigilance Officer, C.O., Puducherry
Ex.M7	a) Dec. 2002 To Feb. 2003	Attendance Sheet (MEX-3)
	b) July 2003	Attendance Sheet (MEX-3)
	c) Aug. 2003 and Sep.2003	Attendance Sheet (MEX-4)
	d) Nov. 2003	Attendance Sheet
	e) Dec. 2003	Attendance Sheet (MEX-5)

Ex.M8	29.11.2003	Letter from Villupuram Branch to M. Kalyani Kumarasamy (to his Villupuram Address) – regarding his unauthorized absence since 03.11.2003 and instructing to report for duty immediately
Ex.M9	12.12.2003	Letter from Villupuram Branch to Mr. K.S. Kalyani Kumarasamy (to his South Kadayam Village Address by RPAD and by ordinary post) – reg. his unauthorized absence (UAA) since 03.11.2003 and instructing him to report for duty forthwith and to his Chennai address (Both – Returned undelivered)
Ex.M10	18.12.2003	News Item published in Dinamani, Dinamalar and Dinakaran
Ex.M11	24.12.2003	Letter from Villupuram Branch to K.S. Kalyana Kumarasamy – to his village address and to his Chennai address – calling for his explanation on lapses committed by him in work (fraudulent withdrawal) and advising to report for work immediately
Ex.M12	09.01.2004	Memo from Villupuram Main Branch to Circle Office, Puducherry – 24.12.2003 letters returned undelivered
Ex.M13	27.01.2004	Letter from CO. Vigilance, Puducherry to CVO and GM (VG) H.O.V.G. Chennai
Ex.M14	30.04.2004	Memo from C.O., Vigilance – Pondicherry to Mr. K.S. Kalyana Kumarasamy on his authorized habitual absence on various period beween 09.12.2002 to 30.04.2004 and calling for his explanation sent by RPAD
Ex.M15	05.05.2004	Memo from Villupuram Main Branch to CO, Pondicherry stating that 30.04.2004 letter to the employee returned undelivered enclosing copy of Postal Acknowledgement with Postal endorsements
Ex.M16	11.05.2004	Letter from Villupuram Main Branch to Circle Office, Puducherry stating Memo dated 30.04.2004 sent by RPAD to the employee returned undelivered
Ex.M17	17.12.2004	Letter from Mr. K.S. Kalyani Kumarasamy from Dadayam to AGM, CO, Pondicherry
Ex.M18	16.12.2003	Letter from Branch Manager, Villupuram to Inspector of Police, Villupuram – regarding the fraudulent transaction by KS Kalyani Kumarasamy
Ex.M19	16.12.2003	FIR
Ex.M20	29.07.2004	Further Memo/Charge Sheet from CO – Vig. – Pondicherry to Mr. K.S. Kalyani Kumarasamy appointing an Enquiry Officer to enquire into the charges leveled against Mr. K.S. Kalyani Kumarasamy
Ex.M21	03.08.2004	Letter from Villupuram Main Branch to CO, Puducherry letter dated 29.07.2004 posted in the door of the place where the employee last staying
Ex.M22	18.08.2004	Letter from Villupuram Main Branch to CO, Puducherry that letters dated 29.07.2004 returned undelivered
Ex.M23	04.10.2004	Paper Publication in "Dina Malar" – Notice of Enquiry /Enquiry on 26.10.2004 (in Tamil)
Ex.M24	26.10.2004	Proceedings of Enquiry
Ex.M25	03.11.2004	Presenting Officer's summing up
Ex.M26	03.06.2005	Letter from Enquiry Officer to DGM/CH/DA/CO/Pondicherry – enclosing Enquiry Report
Ex.M27	09.07.2005	Second Show Cause Memo from CO/Vig./Pondy – to Mr. K.S. Kalyani Kumarasamy to his residential address, Kadayam etc. calling for his comments on the report of Enquiry Officer – with Postal Acknowledgement – (Original) – Confirming receipt of the Memo
Ex.M28	21.11.2005	Letter from CO/Vig./Pondy to Mr. K.S. Kalyani Kumarasamy and to his Kadayam address – advising again to submit his comments on enquiry findings – with Postal Acknowledgement (Original) – confirming receipt of the letter
Ex.M29	21.12.2005	Second Show Cause Memo proposing punishment of

		Compulsory Retirement with superannuation benefits and censure for second charge – calling for his reply and to appear for personal hearing on 02.01.2006, (SSC Memo dated 21.12.2005 – filed by petitioner also and postal acknowledgement
Ex.M30	21.12.2005	Representation of K.S. Kalyani Kumarasami (also filed by petitioner) (with his Sholiganallur address)
Ex.M31	04.01.2006	Reply from CO/Per. Deptt./Pondy to Mr. K.S. Kalyani Kumarasamy to his Sholinganallur address
Ex.M32	17.01.2006	Letter from Indian Bank, Circle Office, Vig. Department, Pondicherry – enclosing copy of postal covers and one returned undelivered cover.
Ex.M33	04.02.2006	Paper publications (two Nos.) directing finally to appear from personal hearing on 22.02.2006 – against the proposed punishment of Compulsory Retirement with superannuation benefits
Ex.M34	28.02.2006	Order of the Disciplinary Authority
Ex.M35	27.03.2006	Paper publication – proposing the punishment of Compulsory Retirement with superannuation benefits
Ex.M36	30.06.2006	Bank's reply to Mr. K.S. Kalyani Kumarasamy on his mercy petitioner dated 29.05.2006 enclosing letter of 28.06.2006 addressed to the employee and postal acknowledgement
Ex.M37	04.08.2006	Letter from Mr. Kalyani Kumarasamy to AGM – Indian Bank, CO., Pondicherry
Ex.M38	25.08.2006	Bank's reply to Mr. K.S. Kalyani Kumarasamy
Ex.M39	28.08.2006	Letter from employee to DGM – Indian Bank, Puducherry
Ex.M40	05.09.2006	Letter from Bank to the employee with postal acknowledgement
Ex.M41	13.03.2013	Letter from AGM – Villupuram Branch to Z.O. Vigilance Cell, Puducherry

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1382.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी लिमिटेड एफएसटीपीपी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 14/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/175/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 14 of 2013) of the Central Government Industrial Tribunal/ Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NTPC Ltd., FSTPP and their workmen, which was received by the Central Government on 28/04/2014

[No. L-42011/175/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2013

Parties : Employers in relation to the management of NTPC Ltd., FSTPP.

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. U.K. Mondal, Ld. Advocate.

On behalf of the Workman : None.

State : West Bengal. Industry: Power.

Dated: 21st April, 2014.

AWARD

By Order No.L-42011/175/2012-IR(DU) dated 28.02.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the Management of NTPC is justified for implementing/allowing two types of wages for contractual workers like 'norms' and 'non-norms' is legal and/or justified? If not what relief the workman are entitled to?"

2. When the case is taken up for hearing today, copy of judgment dated 28th February, 2014 passed by the Hon'ble Calcutta High Court in W.P. 21716 (W) of 2013, W.P. 1357 (W) of 2014 and W.P 1366 (W) of 2014 as received from the Central Government is placed before me. Perused the said judgment. From the said judgment it appears that the Hon'ble Court has been pleased to set aside the order of reference dated Feb 28, 2013.

3. Since the order of reference dated 28.02.2013 has been set aside by the Hon'ble High Court, the instant reference case is disposed of accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st April , 2014.

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1383.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी लिमिटेड, एफएसटीपीपी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 15/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-42011/174/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 15 of 2013) of the Central Government Industrial Tribunal/ Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NTPC Ltd., FSTPP and their workmen, which was received by the Central Government on 28/04/2014.

[No. L-42011/174/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 15 of 2013

Parties: Employers in relation to the management of NTPC Ltd., FSTPP.

AND

Their workmen.

PRESENT : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : Mr. U.K. Mondal, Ld. Advocate.

On behalf of the Workman : None.

State : West Bengal. Industry: Power.

Dated: 21st April, 2014.

AWARD

By Order No.L-42011/174/2012-IR(DU) dated 28.02.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the Management of NTPC is justified for implementing/allowing two types of wages for contractual workers like 'norms' and 'non-norms' is legal and/or justified? If not what relief the workmen are entitled to?"

2. When the case is taken up for hearing today, copy of judgment dated 28th February, 2014 passed by the Hon'ble Calcutta High Court in W.P. 21716 (W) of 2013, W.P. 1357 (W) of 2014 and W.P 1366 (W) of 2014 as received from the Central Government is placed before me. Perused the said judgment. From the said judgment it appears that the Hon'ble Court has been pleased to set aside the order of reference dated Feb 28, 2013.

3. Since the order of reference dated 28.02.2013 has been set aside by the Hon'ble High Court, the instant reference case is disposed of accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st April , 2014.

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1384.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 45/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/178/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 45/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Bharat Sanchar Nigam Ltd, Vijayawada and their workman, which was received by the Central Government on 28/04/2014

[No. L-40012/178/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 3rd day of April, 2014

INDUSTRIAL DISPUTE No. 45/2005

Between:

Sri B. Soundhar Kumar,
C/o Sri P. Appa Rao Reddy,
District Secretary,
NUBSNLW(FNTO), No. 252,
Labour Colony, Vidyadharapuram,
Vijayawada – 12. .....Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Ltd.,
Vijayawada. ....Respondent

Appearances:

For the Petitioner : M/s. Dr. A. Raghu Kumar & B. Pavan Kumar, Advocates

For the Respondent : Sri Karoor Mohan, Advocate

AWARD

In pursuance of the claim made by the Petitioner workman Sri B. Soundhar Kumar, the Government of India, Ministry of Labour by its order No. L-40012/178/2004-IR(DU) dated 9.5.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Limited, Vijayawada in dismissing services of Shri B. Soundhar Kumar, Ex-casual Labour is justified? If not, to what relief the concerned workman is entitled to?"

After receiving the reference this Tribunal has registered and numbered the reference as I.D. No. 45/2005 and issued notices to both the workman and the management. Both parties appeared before the court and engaged their respective counsels. M/s. A. Raghu Kumar & B. Pavan Kumar appeared for the Petitioner and Sri Karoor Mohan appeared on behalf of the Respondent.

2. The Petitioner/workman filed his claim statement with the averments in brief as follows:

Petitioner has been interviewed and selected as casual mazdoor on daily wages by the Assistant Engineer, Railway Electrification Project, Kajipet of the Erstwhile Indian Post and Telegraph Department, vide his letter No. E-2/Mazdoor/84-85/20 at Kajipet dated 1.10.1984. He was continued as such from 1.6.1985 to 1.6.1989 and subsequently again from November, 1996 to 31.5.1999. He completed 8 years of service. The Director General, Telecom, New Delhi vide their letter dated 7.11.1989 introduced a scheme called Casual Labourers(Grant of Temporary Status and Regularization) Scheme, which came into force w.e.f. 1.10.1989 and it is applicable to the casual labourers employed by the Department of Telecommunications as detailed in paras 2 and 3 of the annexure to the said scheme. As per para 4 vacancies in Group D cadre in various offices of the Department are to be exclusively filled by regularization of casual labourers fulfilling the eligibility conditions as per para 4(B). The casual labourers be conferred temporary status as per para 5(i). Even currently employed casual labourers will be conferred with temporary status if they rendered continuous service of atleast one year. Out of which they must have been engaged on work for a period of 240 days. Such confirmation of temporary status would be without reference to the creation/availability of regular Group 'D' posts. The temporary status would entitle the casual labourers for wages on daily rates with reference to a minimum of pay scales for a regular Group 'D' official including DA, HRA and CCA etc., as per para 8 of the Annexure to the scheme. A temporary status mazdoor can be disengaged only in accordance with the relevant provisions of the Industrial Disputes Act, 1947. Petitioner is entitled to the grant of temporary status and regularization as per the scheme. The Department of Telecommunication vide its letter dated 29.9.2000 decided to regularize all the casual labourers working with them including those who were granted temporary status w.e.f. 1.10.2000. The Petitioner was disengaged w.e.f. 1.6.1999 by oral order without following the provisions of Sec.25F of the Industrial Disputes Act, 1947 which is illegal, arbitrary and void ab initio. He approached Assistant Labour Commissioner (C) on 22.9.2003 for re-engagement and for conversion of his case into full time casual labourer and consequential benefits such as regularization etc.. Conciliation failed. Thus, the reference. Petitioner is entitled for reinstatement, grant of temporary status and regularization as per the scheme mentioned above. Respondent have regularized the services of many of the juniors of the Petitioner while refusing to grant the same to the Petitioner. Thus, the Respondent be directed to reinstate the Petitioner with consequential benefits of grant of temporary status and regularization while holding the action of the Respondent disengaging the services of the Petitioner, w.e.f. 1.6.1999 and the scheme of the Respondents, dated 7.11.1989 and 17.12.1993 as violative of Sec.25F and Sec.25(B) of Industrial Disputes Act, 1947.

3. Respondent filed his counter with the averments in brief as follows:-

Contention of the Petitioner that he was interviewed and selected as casual mazdoor on daily wages vie order dated 1.10.1984 w.e.f. 1.6.1984 is all denied. It is also denied that Petitioner worked at different places upto 3.5.1999 and completed 8 years of service with the Respondent.

The scheme calling the casual labourers (grant of temporary status and regularization) scheme DOT Lr. No.269-10/89-STN dated 7.11.1989 effective from 1.10.1989 has been formulated and there after orders were issued from time to time extended scheme to the casual mazdoors working up to 1.8.1998. All the persons who are eligible as per the orders mentioned above were granted temporary status and regularization. Petitioner's name was nowhere found to be eligible under the said scheme. He has not been engaged and hence, the question of granting of temporary status and regularization of his service does no arise. Petitioner was neither engaged nor disengaged. Thus, following all the provisions of Sec.25F of Industrial Disputes Act, 1947 does not arise. He is not a workman. Respondent filed written statement before Assistant Labour Commissioner (C), Vijayawada denying that the Petitioner's services were ever engaged by the Respondent. The relief prayed by the Petitioner are untenable totally and he was never engaged by the Respondent and he is not a workman. No particulars of juniors who according to the Petitioner were regularized, even not mentioned in the petition which itself shows the aforesaid falsity of the allegations. Petitioner is not entitled to an order of reinstatement with consequential benefits of regularization, grant of temporary status sought for. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner, he examined himself as WW1 and got marked Ex.W1 to W5. On behalf of the Respondent management MW1 has been examined and got marked Ex.M1 to M4.

5. WW1 has been cross examined for management. whereas inspite of giving due opportunity, for Petitioner, cross examination of MW1 was not held. This court is constrained to forfeit the Petitioner to cross examine MW1, thus the evidence of MW1 remained unchallenged.

6. Heard the arguments.

7. The point that arise for determination is:-

Whether the Petitioner is entitled for the relief sought for?

8. Point:

It is the contention of the Petitioner that he worked as casual mazdoor for the Respondent for about 8 years. Whereas it is the contention of the Respondent that Petitioner was never engaged as casual mazdoor for them and he never worked for them. To substantiate his contentions Petitioner examined himself as WW1 and he relied upon, Ex.W1, the copy of the letter dated 1.10.1984 said to have been issued by Assistant Engineer, Railway Electrification Project, Kajipet to the Petitioner, stating to the effect that Petitioner has been interviewed on 1.01.1984 at Kajipet and was selected as casual mazdoor on daily wages and Ex.W2 is the copy of work particulars of one Sri Battu Sundar Kumar, said to have been issued by Assistant Engineer, Telecom, Railway Electrification Project, Vijayawada.

9. As can be seen from the cross examination of the Petitioner as WW1, Respondent is disputing with the genuineness of Ex.W1 and W2. It is suggested to WW1 for Respondent that these documents are fabricated for this case. WW1 denied the truth of the said suggestion, but has admitted that these are Photostat copies and expressed his preparedness to file the originals. But no such originals are produced before the court.

10. As already discussed above, Ex.W2 is pertaining to one Sundara Kumar, whereas the name of the workman is 'B. Soundhara Kumar'. Thus, the said document can not be connected to the Petitioner. Likewise, it is for the Petitioner to establish genuineness of Ex.W1 also. The rest of the documents filed for the Petitioner are pertaining to the scheme for regularization of casual labourers regarding which there is no dispute.

11. MW1, the Sub Divisional Engineer of the Respondent, has categorically stated that Petitioner was never interviewed and was never selected as mazdoor on daily wages and that Petitioner never put in 8 years of service as claimed by him and that he was never disengaged. It is their categorical contention that the scheme for regularization of casual labourers formulated is not at all applicable to the Petitioner as his services were never engaged. This witness has not been subjected to cross examination for the Petitioner, thus, his evidence remained unchallenged.

12. In the given circumstances, it is to be taken that Petitioner failed to establish his claim that he has been working as casual mazdoor for the Respondent and that he was disengaged by the Respondent at any point of time. Thus, he is not entitled for any direction for reinstatement into service and consequential benefits of conferring of temporary status and regularization, sought for by him.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

There is no proof that the management of Bharat Sanchar Nigam Limited, Vijayawada engaged the services of the Petitioner and dismissed his services, hence, the Petitioner is not entitled for any of the reliefs sought for.

Hence, reference is answered in negative.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 3rd day of April, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri B. Soundhar Kumar	MW1 : Sri M. Panakala Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of the lr. No.E-2/Mazdoor/84-85/20, dated.1.10.1984

Ex.W2: Photostat copy of the employment particulars of one Sri Battu Sundar Kumar

Ex.W3: Photostat copy of DG Telecom, New Delhi lr.No.269-10/89-STN dt.7.11.89

Ex.W4: Photostat copy of lr. of DOT, New Delhi No.269-4/93 dt. 17.12.93

Ex.W5: Photostat copy of Lr. No.269-94/98-STN-II dt.29.9.2000

Documents marked for the Respondent

Ex.M1: Photostat copy of DG Telecom, New Delhi lr.No.269-10/89-STN dt.7.11.89

Ex.M2: Photostat copy of lr. of DoT lr.No.269/4/93-STN-II dated 17.12.1993

Ex.M3: Photostat Copy of TCHQ lr.No. 269-4/93-STN-II dated 12.2.1999 reg. sanction of posts of regular mazdoor for regularization of temporary status casual mazdoors.

Ex.M4: Photostat copy of lr. No.269-12/99-STN-II of DTS New Delhi dt. 9.6.2000

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1385.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा जनरल मैनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 47/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/180/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 47/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Bharat Sanchar Nigam Ltd, Vijayawada and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/180/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 3rd day of April, 2014

INDUSTRIAL DISPUTE No. 47/2005

Between :

Sri N. Shiva Kumar,
C/o Sri P. Appa Rao Reddy,
District Secretary,
NUBSNLW (FNTO), No.252,
Labour Colony, Vidyadharapuram,
Vijayawada – 12. .....Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Ltd.,
Vijayawada. ....Respondent

Appearances:

For the Petitioner : M/s. Dr. A. Raghu Kumar & B. Pavan Kumar, Advocates

For the Respondent : Sri Karoor Mohan, Advocate

AWARD

In pursuance of the claim made by the Petitioner workman Sri N. Shiva Kumar, the Government of India, Ministry of Labour by its order No. L- 40012/180/2004-IR(DU) dated 3.5.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Limited, Vijayawada in dismissing services of Shri N. Shiva Kumar, Ex-casual Labour is justified? If not, to what relief the concerned workman is entitled to?"

After receiving the reference this Tribunal has registered and numbered the reference as I.D. No. 47/2005 and issued notices to both the workman and the management. Both parties appeared before the court and engaged their respective counsels. M/s. A. Raghu Kumar & B. Pavan Kumar appeared for the Petitioner and Sri Karoor Mohan appeared on behalf of the Respondent.

2. The Petitioner/workman filed his claim statement with the averments in brief as follows:

Petitioner has been interviewed and selected as casual mazdoor on daily wages by the Assistant Engineer (Cables) CTO Building, Vijayawada, vide his letter No.1-9/Mazdoor/83-84/65 at Vijayawada dated 390.4.1984 w.e.f.

1/4/1984. He was continued as such from 1.4.1984 to 1.4.1998. He completed 14 years of service. The Director General, Telecom, New Delhi vide their letter dated 7.11.1989 introduced a scheme called Casual Labourers(Grant of Temporary Status and Regularization) Scheme, which came into force w.e.f. 1.10.1989 and it is applicable to the casual labourers employed by the Department of Telecommunications as detailed in paras 2 and 3 of the annexure to the said scheme. As per para 4 vacancies in Group D cadre in various offices of the Department are to be exclusively filled by regularization of casual labourers fulfilling the eligibility conditions as per para 4(B). The casual labourers be conferred temporary status as per para 5(i). Even currently employed casual labourers will be conferred with temporary status if they rendered continuous service of atleast one year. Out of which the must have been engaged on work for a period of 240 days. Such confirmation of temporary status would be without reference to the creation/availability of regular Group 'D' posts. The temporary status would entitle the casual labourers for wages on daily rates with reference to a minimum of pay scales for a regular Group 'D' official including DA, HRA and CCA etc., as per para 8 of the Annexure to the scheme. A temporary status mazdoor can be disengaged only in accordance with the relevant provisions of the Industrial Disputes Act, 1947. Petitioner is entitled to the grant of temporary status and regularization as per the scheme. The Department of Telecommunication vide its letter dated 29.9.2000 decided to regularize all the casual labourers working with them including those who were granted temporary status w.e.f. 1.10.2000. The Petitioner was disengaged w.e.f. 2.4.1998 by oral order without following the provisions of Sec.25F of the Industrial Disputes Act, 1947 which is illegal, arbitrary and void ab initio. He approached Assistant Labour Commissioner (C) on 22.9.2003 for re-engagement and for conversion of his case into full time casual labourer and consequential benefits such as regularization etc.. Conciliation failed. Thus, the reference. Petitioner is entitled for reinstatement, grant of temporary status and regularization as per the scheme mentioned above. Respondent have regularized the services of many of the juniors of the Petitioner while refusing to grant the same to the Petitioner. Thus, the Respondent be directed to reinstate the Petitioner with consequential benefits of grant of temporary status and regularization while holding the action of the Respondent disengaging the services of the Petitioner, w.e.f. 2.4.1998 and the scheme of the Respondents, dated 7.11.1989 and 17.12.1993 as violative of Sec.25F and Sec.25(B) of Industrial Disputes Act, 1947.

3. Respondent filed his counter with the averments in brief as follows:-

Contention of the Petitioner that he was interviewed and selected as casual mazdoor on daily wages vide order dated 30.4.1984 w.e.f. 1.4.1984 is all denied. It is also denied that Petitioner worked at different places upto 1.4.1998 and completed 14 years of service with the Respondent. The scheme calling the casual labourers (grant of temporary status and regularization) scheme DOT Lr. No.269-10/89-STN dated 7.11.1989 effective from 1.10.1989 has been formulated and there after orders were issued from time to time extended scheme to the casual mazdoors working up to 1.8.1998. All the persons who are eligible as per the orders mentioned above were granted temporary status and regularization. Petitioner's name was nowhere found to be eligible under the said scheme. He has not been engaged and hence, the question of granting of temporary status and regularization of his service does no arise. Petitioner was neither engaged nor disengaged. Thus, following all the provisions of Sec.25F of Industrial Disputes Act, 1947 does not arise. He is not a workman. Respondent filed written statement before Assistant Labour Commissioner (C), Vijayawada denying that the Petitioner's services were ever engaged by the Respondent. The relief prayed by the Petitioner are untenable totally and he was never engaged by the Respondent and he is not a workman. No particulars of juniors who according to the Petitioner were regularized, even not mentioned in the petition which itself shows the aforesaid falsity of the allegations. Petitioner is not entitled to an order of reinstatement with consequential benefits of regularization, grant of temporary status sought for. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner, he examined himself as WW1 and got marked Ex.W1 to W4. On behalf of the Respondent management MW1 has been examined and got marked Ex.M1 to M4.

5. WW1 has been crossexamined for management. Whereas inspite of giving due opportunity, for Petitioner, cross examination of MW1 was not held. This court is constrained to forfeit the Petitioner to cross examine MW1, thus the evidence of MW1 remained unchallenged.

6. Heard the arguments.

7. The point that arise for determination is:-

Whether the Petitioner is entitled for the relief sought for?

8. Point:

It is the contention of the Petitioner that he worked as casual mazdoor for the Respondent for about 14 years. Whereas it is the contention of the Respondent that Petitioner was never engaged as casual mazdoor for them and he never worked for them. To substantiate his contentions Petitioner examined himself as WW1 and he relied upon, Ex.W1, the copy of the letter dated 30.4.1984 said to have been issued by Assistant Engineer(Cables), Vijayawada to the Petitioner, stating to the effect that Petitioner has been interviewed on 30.4.1984 at Vijayawada

and was selected as casual mazdoor on daily wages and Ex.W2 is the copy of work particulars of the Petitioner said to have been issued by Assistant Engineer, Cable, Vijayawada.

9. As can be seen from the cross examination of the Petitioner as WW1, Respondent is disputing with the genuineness of Ex.W1 and W2. It is suggested to WW1 for Respondent that these documents are fabricated for this case. WW1 denied the truth of the said suggestion, but has admitted that these are Photostat copies and expressed his preparedness to file the originals. But no such originals are produced before the court.

10. It is for the Petitioner to establish genuineness of Ex.W1 and Ex.W2. He failed to do so. The rest of the documents filed for the Petitioner are pertaining to the scheme for regularization of casual labourers regarding which there is no dispute.

11. MW1, the Sub Divisional Engineer of the Respondent, has categorically stated that Petitioner was never interviewed and was never selected as mazdoor on daily wages and that Petitioner never put in 8 years of service as claimed by him and that he was never disengaged. It is their categorical contention that the scheme for regularization of casual labourers formulated is not at all applicable to the Petitioner as his services were never engaged. This witness has not been subjected to cross examination for the Petitioner, thus, his evidence remained unchallenged.

12. In the given circumstances, it is to be taken that Petitioner failed to establish his claim that he has been working as casual mazdoor for the Respondent and that he was disengaged by the Respondent at any point of time. Thus, he is not entitled for any direction for reinstatement into service and consequential benefits of conferring of temporary status and regularization, sought for by him.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

There is no proof that the management of Bharat Sanchar Nigam Limited, Vijayawada engaged the services of the Petitioner Shri N. Shiva Kumar and dismissed his services, hence, the Petitioner is not entitled for any of the reliefs sought for.

Hence, reference is answered in negative.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of April, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri N. Shiva Kumar	MW1: Sri M. Panakala Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of the lr. No.1-9/Mazdoor/83-84/65 dated 30.4.1984

Ex.W2: Photostat copy of the employment particulars of one Sri N. Siva Kumar

Ex.W3: Photostat copy of DG Telecom, New Delhi lr.No.269-10/89-STN dt.7.11.89

Ex.W4: Photostat copy of Lr. No.269-94/98-STN-II dt.29.9.2000

Documents marked for the Respondent

Ex.M1: Photostat copy of muster roll folio No.5, Book No.AP 518 pertains to May, 1984 issued by Sub-Divisional Officer(Phones) Vijayawada.

Ex.M2: Photostat copy of muster roll folio No.5, Book No.AP 518 pertains to June, 1984 issued by Sub-Divisional Officer (Phones) Vijayawada.

Ex.M3: Photostat copy of DG Telecom, New Delhi lr.No.269-10/89-STN dt.7.11.89

Ex.M4: Photostat copy of lr. of DoT lr.No.269/4/93-STN-II dated 17.12.1993

Ex.M5: Photostat Copy of TCHQ lr.No. 269-4/93-STN-II dated 12.2.1999 reg. sanction of posts of regular mazdoor for regularization of temporary status casual mazdoors.

Ex.M6: Photostat copy of lr. No.269-12/99-STN-II of DTS New Delhi dt. 9.6.2000

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1386.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा सुपरिन्टेन्डेन्ट ऑफ पोस्ट, हेड पोस्ट ऑफिस, शहडोल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/25/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/161/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/25/2005) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of the Supdt. of Post, Head Post Office, Shahdol and their workman, which was received by the Central Government on 28/04/2014

[No. L-40012/161/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/25/05

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Yadvendra Singh,
S/o Shri Darku Singh,
Vill/PO Mithori,
Distt. Shahdol (MP) .....Workman

Versus

The Supdt. Of Post,
Head post Office,
Shahdol (MP) .....Management

AWARD

Passed on this 8th day of April 2014

1. As per letter dated 22-3-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/161/2004-IR(DU). The dispute under reference relates to:

> " Whether the action of the Supdt. Of Head Post Office, shahdol MP in terminating the services of Shri Yadvendra, Post Master, who rendered continuous service of 18 months (completed more than 240 days of continuous services in a calendar year) without complying the provisions of the I.D.Act, 1947 is legal and justified? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. workman submitted statement of claim. Case of workman is that he had submitted application for EDBPM, Mithouri on 18-4-85. As per order dated 12-3-05, he was appointed as post master Mithouri, he was performing his duties continuously 18 months. . he received treatment on 3-11-1985. As per order dated 16-2-85, he was entrusted entire work of mobile post office. On 12-9-86, he was directed to handover charge to one Brijesh Prasad Dwivedi of branch Nigheri. Thereafter he submitted application to the appointing authority, Suptd. Of Post office, Raipur on 18-10-86. As per letter dated dated 26-11-86, he was assured that his name was included in Waiting List. Despite of repeated correspondence, he was not allowed to look after the work of mobile post office. Only assurances were given about his appointment. He was not appointed on any other post. There were vacancies that on 23-1-04, workman issued notice to the appointment authority Shahdol as per reply dated 24-2-04, the authority refused his request for his appointment. Workman submits that he may be reinstated with consequential benefits.

3. IInd party Suptd. Post Office, Shahdol submitted Written Statement at Page 8/1 to 8/3. Claim of workman is denied. It is submitted that workman was involved in offence under Section 302. He was committed to jail. Brijesh Prasad Dwivedi was entrusted work of Mithouri branch Mobile Post office from 27-5-81. The workman was acquitted in criminal case No. 44/85 on 4-8-86. He was allowed to work in branch office from 4-9-86 subject to certain conditions. In parawise remark, IInd party submits that applications were called for Mobile Postman on 18-4-85. Workman had admitted terms and conditions. His services were liable to be terminated without notice. It is denied that workman was given training of sub Post office. All other material contentions of workman are denied. Workman was entrusted work subject to terms and conditions. As per letter dated 26-11-86 it was informed to workman that employee working less than 3 years can be terminated any time. That as per letter dated 23-2-79, if vacant post is not available within one year, name from waiting List is to be withdrawn. It is submitted that workman is trying to mislead this Tribunal. There is no provision for payment of compensation..workman cannot be appointed as no post is liable vacant.

4. Workman submitted rejoinder reiterating his contentions in statement of claim. IInd party also submitted rejoinder reiterating contentions in Written Statement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the Supdt. of Head Post Office, shahdol MP in terminating the services of Shri Yadvendra, Post Master, who rendered continuous service of 18 months (completed more than 240 days of continuous services in a calendar year) without complying the provisions of the I.D.Act, 1947 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Workman is challenging termination of his services. Details pleaded in his written statement. The workman filed affidavit of his evidence. Workman has stated that he was appointed as per order dated 12-3-85 as sub postmaster. He has continuously rendered his services till 1988. On 16-2-86, he was entrusted the entire charge of work. He was relieved on 18-10-86 as per the directions of

Suptd. of Post Office, Raipur. Thereafter his repeated request and representations were not considered. He was not allowed to work. He was not paid retrenchment compensation etc. In his cross-examination workman says he had readover memo signed at the time of joining Exhibit M-1. He denies that if the work was over he would be provided work at other place. When he requested for his joining, he was informed that his name was included in the Waiting List. He had received training at Annuppur about work of Saving scheme. He was allowed work of saving Scheme time to time. Accordingly he was working. The document Exhibit W-1 is by office of Suptd. Of Post Office, Shahdol is a notice for filling office of mobile Post Office. The remuneration was Rs. 177/- per month. It was subject to several conditions mentioned in the document. That the candidates would be local, he should possess accommodation for such Post office. Memorandum Exhibit W-2 clearly shows that appointment of Ist party workman was liable to be terminated without notice. The provisional appointment was till regular appointment was made. It is clear that workman was not regularly appointed. Document Exhibit W-3 is about training received by workman. Exhibit W-4 is order of appointment of workman on 16-2-85. As per document Exhibit W-5, workman was liable to be terminated at any time. The requisite forms were to be filled by workman. Exhibit W-6 is the list of handing over charge. Exhibit W-7 is letter given by Suptd. of Post Shahdol directing workman to handover charge and he was relieved. Documents Exhibit W-8 shows that workman was informed his name was included in Waiting List in pursuance of letter dated 18-10-86. Exhibit W-9 is notice issued by workman, W-10 is reply by management denying his request for appointment. The evidence discussed above clearly shows that appointment of workman was not till regular appointment was made. His appointment was subject to conditions. His services were liable to be terminated without notice. When workman was not appointed on regular basis, his services were liable to be terminated without notice. As per the terms of appointment workman is not entitled to protection under Section 25 of I.D.Act. therefore I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the Supdt. Of Head Post Office, shahdol MP in terminating the services of Shri Yadvendra, Post Master, who rendered continuous service of 18 months (completed more than 240 days of continuous services in a calendar year) without complying the provisions of the I.D.Act, 1947 is legal and proper.

(2) Workman is not entitled to relief claimed.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1387.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा टेलीकॉम डिस्ट्रिक्ट मैनेजर, सागर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/22/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/45/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/22/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom District Manager, Sagar and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/45/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/22/03

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Kailash Rajak,
S/o Shri Gopilal Rajak,
46, Cantt. Dr.Ramesh,
Sagar (MP) .....Workman

Versus

Telecom District Manager,
Sagar (MP) .....Management

AWARD

Passed on this 11th day of April 2014

1. As per letter dated 8-1-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/45/2002-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. Of Telecom now converted into Telecom District Manager, Sagar (MP) Bharat Sanchar Nigam Limited in terminating

the services of Shri Kailash Rajak S/o Shri Gopilal Rajak w.e.f. 30-4-89 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/2. Case of workman is that he was engaged as casual labour on muster roll from April 1986 and worked under IInd party No.3 District Manager, BSNL, Circle Bhopal. He continued to work till March 1989. There was no grievance about his work. As per terms of Hon'ble Supreme Court, scheme for regularization of casual labours was introduced. The letter in that regard was issued by IInd party. Instead of regularization his services as per the scheme from March 1989, he was discontinued. Order in writing terminating his services was not received, he was not paid retrenchment compensation. Notice was not issued to him. Termination of his service is in violation of Section 25-F, N of I.D.Act. on such ground, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 8/1 to 8/2. IInd party contents that MP Telecom is having largest area in the country. The telecom facilities were less in comparison to other states. For development of telecom facilities, it is planned to increase the telecom facilities by opening new telephone exchanges in rural areas/ laying cables and other work of installation. In order to complete the project at various places labours were engaged at daily rated basis. Workers were not engaged for regular work as an when project work were completed. Casual workers were not required to be continued. There was no need to keep casual workers. Therefore their services were discontinued. It is further submitted that workman was never appointed against any post in the department. He worked purely on casual basis for specific target project work. That the workman worked 151 days in 1985, 351 days in 1986, 365 days in 1987, 298 days in 1988 & 90 days in 1989. That as per instructions contained in letter dated 30-8-85, the casual labours could not be engaged after 30-3-85. In project electrical circles only for specific work casual labours were required to be retrenched. Accordingly the casual labours were discontinued after completion of the work who were engaged after 30-3-85. That workman is not entitled to temporary status and benefit of regularization scheme 1989 as benefit of said scheme was only to workers engaged prior to 30-3-85 continuing casual workers as on 7-11-89 employees who completed 240 days continuous service. The workman was not engaged during said period. On such ground, IInd party submits that workman is not entitled for regularization. He was engaged purely on temporary basis. There is no question of compliance of Section 25-G of I.D.Act. On such grounds. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. Of Telecom now converted into Telecom District Manager, Sagar (MP) Bharat Sanchar Nigam Limited in terminating the services of Shri Kailash Rajak S/o Shri Gopilal Rajak w.e.f. 30-4-89 and not regularizing as regular employee is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services for violation of Section 25-F of I.D.Act. that he was continuously working with IInd party 3 & 4 from April 1986 to March 1989 as casual employee. His services were terminated without notice, retrenchment compensation was not paid to him. He was not given benefits of the scheme. For regularization of casual employees. IInd party denies all material contentions of workman. It is reiterated that the workman was engaged as casual employee. He was not appointed against regular post, compliance of Section 25-F is not followed.

6. Workman filed affidavit of his evidence covering most of his contentions in statement of claim. He has stated that he had worked for 152 days in 1985, 351 days in 1986, 365 days in 1987, 298 days in 1988, 90 days in 1989. That benefit of scheme for regularization of casual employees was not given to him. His services were illegally terminated without notice. Workman did not appear for his cross-examination. His evidence was closed on 23-5-2012. Management filed affidavit of its witness Shri R.G.Gohe. witness of the management has stated that workman was engaged for laying down telephone cable Project of the department, said work is over. Thereafter the workman was discontinued. The evidence of management's witness remained unchallenged. Though the workman is not made available for cross-examination, his evidence could not be considered. The evidence of management's witness remained unchallenged. In Written Statement itself, IInd party has admitted working days of the workman. Workman has completed 351 days in 1986, 365 days in 1987, 290 days in 1988. His services were discontinued from April 1989. Thus the evidence is clear that workman had completed 240 days continuous service. He is covered as workman under Section 25(B) of I.D.Act. the documents Exhibit M-2 shows the working days of the workman. The said document is admitted by IInd party.

Evidence of management's witness is silent about compliance of Section 25-F. No retrenchment compensation was paid, notice of termination was not issued to workman as per pleadings in Written Statement of the IInd party. Therefore the termination of services of workman is illegal for violation of Section 25-F of I.D.Act. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1, the services of workman were terminated in violation of Section 25-F , question arises whether workman is entitled for reinstatement with back wages. On the point, learned counsel for IInd party Mr. Kapoor relies on ratio held in case of

> " Senior Superintendent Telegraph (Traffic) Bhopal versus Santosh Kumar Seal and others reported in 2010 (6) Supreme Court Cases 773. Their Lordship dealing with the point of reinstatement with back wages held relief by way of reinstatement with back wages not automatic even if termination of employee is found to be illegal or in contravention of the prescribed procedure and monetary compensation in cases of such nature may be appropriate. On facts as the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2-3 years, relief of reinstatement and back wages to them cannot be said to be justified. Monetary compensation of Rs.40,000/- was directed to be paid."

Copy of award passed by this Tribunal in R/7/03 is produced by counsel for IInd party. In said case, considering length of service more than 5 years, compensation Rs. 1 Lakh was allowed to the concerned workman.

In present case as per documentary evidence, workman was working with management from 1986 to 1989 for about 4 years. Since April 1989, workman is not in employment. He was not appointed following recruitment rules. Considering above, aspects, reinstatement of workman is not justified. In my considered view, compensation Rs. 75,000/- would be appropriate to meet the ends of justice. Accordingly I record my finding in Point No.1.

8. In the result, award is passed as under:-

(1) The action of the management of Telecom District Manager, Sagar (MP) Deptt. Of Telecom now converted into Telecom District Manager, Sagar (MP) Bharat Sanchar Nigam Limited in terminating the services of Shri Kailash Rajak S/o Shri Gopilal Rajak w.e.f. 30-4-89 and not regularizing as regular employee is illegal.

(2) IInd party management is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of publication of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1388.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा अफसर इन चार्ज, टेलीग्राफ डिपार्टमेंट, कोरबा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/92/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/40/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/92/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Officer-in-charge, Telegraph Department, Korba and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/40/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/92/2000

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Ganesh Ram Banjare,
Vill.Salihabhata (Dong Garah),
PO Nonbirrah,Via Bhaisma,
Korba (MP) .....Workman

Versus

Officer-in-charge,
Telegraph Department,
Departmental Telegraph Office,
PO Korba,
Korba (MP) .....Management

AWARD

Passed on this Ist day of April 2014

1. As per letter dated 29-5-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/40/2000/IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Ganesh Ram Banjare, ex-messenger of Telegraph Office w.e.f. 1996/19-5-99 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. workman submitted statement of claim at page 3/1 to 3/2. Case of workman is that he was working as part time sweeper from May 1991 to 99 in establishment of IInd party. He was continuously working. He was paid regular salary form 87 in Pay scale Rs. 375/- in addition to DA from 1992 he was paid gross salary Rs.600/- per month. That as per judgment of Apex Court dated 24-1-97, he was not regularized by IInd party. Instead regularizing his service, his services were terminated. Ist party further submits that he had completed 240 days continuous service. He was denied benefits of regularization, order was issued by CGM, HRD, Bhopal for regularization of part time employees. It was not followed by IInd party. His services were illegally terminated. Workman has calculated wages he would have received if not terminated by IInd party amounting to Rs. 2,82,147/-. Workman prays for his reinstatement with back wages.

3. Management filed Written Statement in form of affidavit. That Mohd. Bashir Khan was appointed as Presenting Officer in the matter. He was conversant with facts and documents of the case. That Ist party workman had worked in IInd party whenever work was available. His employment was on basis of availability of work. There was no question of continuous employment in case of casual workers. It was denied that Ist party workman was continuously working. It was alleged there was no cause of action. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Ganesh Ram Banjare, ex-messenger of Telegraph Office w.e.f. 1996/19-5-99 is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services. Instead of regularizing his services by IInd party, his services were illegally terminated. He was not given benefit of regularization of his services as per the direction given by Asstt. General Manager, Telephone Bhopal dated 27-8-98 and judgment by Apex Court dated 24-1-97. Workman has pleaded that he was continuously working and he was paid salary as per pay scale and DA. IInd party has denied continuous working of Ist party workman. There was no question of his continuous working as casual employee. However rest of contentions of workman are denied in the Written Statement filed by management.

6. Workman has filed affidavit of his evidence covering his contentions in Statement of claim that he was working in IInd party from 1991 to 1995 for 1642 days and continuously from 1996 to 1999. He was regularly working with IInd party. That he was not working under contractor. His salary was paid by the department. He was working as messenger . He has estimated back wages Rs. 2,82,147. In his cross-examination, workman says that he has not received appointment letter, he was distributing telegram. He was paid wages for his working days. He has produced documents about his working. He was retaining zerox copies of the documents he received for distribution. He had never worked under contractor.

7. Management filed affidavit of witness Shri N.D.Sharma. Management's witness has denied that workman was continuously working from 1991 to 99. That workman was engaged on daily wages as and when subject to availability of work. Workman was not engaged as regular employee through Employment Exchange following recruitment process. In his cross-examination, management's witness says workman was working during 1993-94 as temporary labour. He admits Exhibit M-1, it is of their department. That proposal for regularization of workman was submitted to the office Exhibit M-2.

8. Document Exhibit M-1 provides for conversion of part time casual labours to full time staff. Para-1 of the directions reads as under:-

> "Issue of conversion of part time casual labourers into full time staff has been taken up by the staff side in the 28th JCM Meeting. In this connection, it is mentioned that the employment of part time casual labourers was banned vide this office order No. 269-39/84-STN dated 14-8-84 wherein it was decided that existing part time casual labourers may be absorbed against regular vacancies and in future, there will be no further recruitment of part time mazdoors in the department. Para-3 of the directions deals with- that part time casual employees may be brought to the strength of full time casual labourers subject to the availability of work and suitability. For this purpose, the work requirements of different types and at neighboring units can be pooled."

However workman was not given benefit of directions. His services were terminated without notice.

9. Learned counsel for workman has submitted copy of award in Case No. R/87 to 91/2000. In Para 17 ratio held in case of Director, Fisheries Terminal Department versus Bhiubhai Meghajibhai Chavda in 2010(2) MPLJ 30 is discussed. The legal position is clear that after workman claims he was continuously working more than 240 days, management is in custody of the record, the burden shifts on management to establish that workman has not completed 240 days continuous service. Management has not produced any record to establish that workman has not completed 240 days continuous service during any of the year. Therefore the evidence of workman deserves to be believed. The services of workman are terminated without notice, no retrenchment compensation is paid. Workman was not given benefit of regularisation as per direction Exhibit M-1. Therefore, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding that the termination of service of workman is illegal, question arises to what relief the workman is entitled. The evidence of workman is silent what work he was doing after termination of his service. Management also not adduced evidence that workman was in gainful employment. As per Exhibit M-1, workman was entitled for regularization of his service. Therefore the workman is entitled for reinstatement with 25 % back wages. Accordingly, I record my finding in Point No.2.

11. In the result, award is passed as under:-

(1) The action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Ganesh Ram Banjare, ex-messenger of Telegraph Office w.e.f. 1996/19-5-99 is not legal and proper.

(2) IInd party management is directed to reinstate workman with 25 % back wages.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1389.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा अफसर इन-चार्ज, टेलीग्राफ डिपार्टमेंट, कोरबा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/88/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/42/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/88/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Officer-in-charge, Telegraph Department, Korba and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/42/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/88/2000

PRESIDING OFFICER : Shri R. B. Patle

Shri Jogilal Chauhan,
C/o Santosh Kuteer, Mudapar,
Korba (MP) . . .Workman

Versus

Officer-in-charge,
Telegraph Department,
Departmental Telegraph Office,
PO Korba,
Korba (MP) . . . Management

AWARD

Passed on this 1st day of April, 2014

1. As per letter dated 29-5-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/42/2000/IR(DU). The dispute under reference relates to :

> " Whether the action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Jogilal Chauhan, ex-messenger of Telegraph Office w.e.f. 1996/April, 1999 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties, workman submitted statement of claim at pages 3/1 to 3/2. Case of workman is that he was working as part time sweeper from 1-7-86 to 99 in establishment of IInd party. He was paid Rs. 150/- per month. He was continuously working. He was paid regular salary form 87 in Pay scale Rs. 375/- in addition to DA from 1992 he was paid gross salary Rs.600/- per month. That as per judgment of Apex Court dated 24-1-97, he was not regularized by IInd party. Instead regularizing his service, his services were terminated. Ist party further submits that he had

completed 240 days continuous service. He was denied benefits of regularization, order was issued by CGM, HRD, Bhopal for regularization of part time employees. It was not followed by IInd party. His services were illegally terminated. Workman has calculated wages he would have received if not terminated by IInd party amounting to Rs. 2,82,147/-. Workman prays for his reinstatement with back wages.

3. Management filed Written Statement in form of affidavit. That Mohd. Bashir Khan was appointed as Presenting Officer in the matter. He was conversant with facts and documents of the case. That Ist party workman had worked in IInd party whenever work was available. His employment was on basis of availability of work. There was no question of continuous employment in case of casual workers. It was denied that Ist party workman was continuously working. It was alleged there was no cause of action. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Jogilal Chauhan, ex-messenger of Telegraph Office w.e.f. 1996/April, 1999 is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services. Instead of regularizing his services by IInd party, his services were illegally terminated. He was not given benefit of regularization of his services as per the direction given by Asstt. General Manager, Telephone Bhopal dated 27-8-98 and judgment by Apex Court dated 24-1-97. Workman has pleaded that he was continuously working and he was paid salary as per pay scale and DA. IInd party has denied continuous working of Ist party workman. There was no question of his continuous working as casual employee. However rest of contentions of workman are denied in the Written Statement filed by management.

6. Workman has filed affidavit of his evidence covering his contentions in Statement of claim that he was working in IInd party from 1986 to 1990 for 1665 days, 4 hours per day from 1991 to 1995, 1388 days from 1996 to 1999. He was regularly working with IInd party. That he was not working under contractor. His salary was paid by the department. He was working as sweeper. He has estimated back wages Rs. 2,82,147/- . In his cross-examination, workman denied he was working under contractor. There is no contention in Written Statement filed by management that workman was engaged by contractor. The suggestion appears to be after thought. Workman in his cross-examination says the post was not advertised. He was called as per exigency of staff. He was paid wages for working days. He has not produced documents about his working in the department. He denied suggestion that he had not completed 240 days continuous service.

7. Management filed affidavit of witness Shri N.D.Sharma. Management's witness has denied that workman was continuously working from 1986 to 99. That workman was engaged on daily wages as and when subject to availability of work. Workman was not engaged as regular employee through Employment Exchange following recruitment process. In his cross-examination, management's witness says he is working in Korba office of IInd party from May 08. He claims ignorance whether workman Jogilal Chouhan and other 5 workers were recommended for regularisation. Management's witness admitted document Exhibit M-1. Wages were paid to workman through his office. He claims ignorance whether the workman was terminated without notice. No document is produced about the workman engaged through contractor.

8. Document Exhibit M-1 provides for conversion of part time casual labourers to full time staff. Para-1 of the directions reads as under:-

> "Issue of conversion of part time casual labourers into full time staff has been taken up by the staff side in the 28th JCM Meeting. In this connection, it is mentioned that the employment of part time casual labourers was banned vide this office order No. 269-39/84-STN dated 14-8-84 wherein it was decided that existing part time casual labourers may be absorbed against regular vacancies and in future, there will be no further recruitment of part time mazdoors in the department. Para-3 of the directions deals with- that part time casual employees may be brought to the strength of full time casual labourers subject to the availability of work and suitability. For this purpose, the work requirements of different types and at neighbouring units can be pooled."

However, workman was not given benefit of directions. His services were terminated without notice.

9. Learned counsel for workman has submitted copy of award in Case No. R/87 to 91/2000. In Para 17 ratio held in case of Director, Fisheries Terminal Department versus Bhiubhai Meghajibhai Chavda in 2010(2) MPLJ 30 is discussed. The legal position is clear that after workman claims he was continuously working more than 240 days, management is in custody of the record, the burden shifts on management to establish that workman has not completed 240 days continuous service. Management has not produced any record to establish that workman has not completed 240 days continuous service during any of

the year. Therefore the evidence of workman deserves to be believed. The services of workman are terminated without notice, no retrenchment compensation is paid. Workman was not given benefit of regularisation as per direction Exhibit M-1. Therefore, I record my finding in Point No.1 in Negative.

10. Point No. 2- In view of my finding that the termination of service of workman is illegal, question arises to what relief the workman is entitled. The evidence of workman is silent what work he was doing after termination of his service. Management also not adduced evidence that workman was in gainful employment. As per Exhibit M-1, workman was entitled for regularization of his service. Therefore the workman is entitled for reinstatement with 25% back wages. Accordingly, I record my finding in Point No. 2.

11. In the result, award is passed as under:-

(1) The action of the management of Officer-in-charge, Departmental Telegraph Office, Korba in terminating the services of Shri Jogilal Chauhan, ex-messenger of Telegraph Office w.e.f. 1996/ April, 1999 is not legal and proper.

(2) IInd party management is directed to reinstate workman with 25 % back wages.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1390.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, इंदिरा गांधी राष्ट्रीय मानव संग्रहालय, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/181/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-42012/18/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/ LC/R/181/98) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal and their workman, which was received by the Central Government on 28/04/2014.

[No. L-42012/18/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/181/98

PRESIDING OFFICER : Shri R. B. Patle

Shri Sena,
S/o Narsingh Beel, Suraj Nagar,
Bhadbhada,
Bhopal . . . Workman

Versus

The Director,
Indira Gandhi Rashtriya Manav
Sangrahalaya, Shamla Hills,
Bhopal . . . Management

AWARD

Passed on this 7th day of April, 2014

1. The Government of India, Ministry of Labour *vide* its Notification No. L-42012/18/98-IR(DU) dated 22-7-98 has referred the following dispute for adjudication by this tribunal:-

> " Whether the action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Sena, S/o Narsingh Beel is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed as chowkidar in clear vacancy on 16-4-90. The service record was excellent. He was member of Rashtriya Manav Sangrahalaya Karmchari Sangh. His services were terminated w.e.f. 8-8-95. That he had continuously worked for more than 240 days in calendar year. He was not served notice, no retrenchment compensation was paid to him. The services were terminated in violation of Section 25-H of I.D. Act on such ground, workman prays for his reinstatement with consequential benefits.

3. Management filed Written Statement. IInd party submitted that it is not covered as industry under Section 2(j) of I.D. Act. That appropriate Government for IInd party is State Govt., Central Govt. has no authority to make reference. Workman was engaged on daily wages w.e.f. 8-8-95. Workman remained absent from work. There are no ground to make out dispute between parties. IInd party denied that workman was appointed against clear vacant post of chowkidar. That there is no registered Union. The violation of Section 25-F, G, H of I.D. Act is denied by IInd party.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Indira Gandhi Rashtriya Manav Sangrahalaya is an Industry?	Not proved
(ii) Whether the management illegally terminated the services of the workman?	In Affirmative
(iii) Whether their workmen is entitled to reinstatement with full back wages?	In Affirmative
(iv) Whether the reference is maintainable?	Reference is tenable.
(v) Relief and costs?	As per final order.

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of I.D. Act. Workman filed affidavit of his evidence. He has stated that he was appointed on post of chowkidar against clear vacancy on 16-4-90. He was continuously working till 18-8-95. His services were terminated. That he had worked more than 240 days prior to termination of his service. He was not paid retrenchment compensation. Prior permission of Competent authority for termination was not taken. In his cross-examination workman says he rendered services at Vallabh Bhawan, Bhopal. He had to produced appointment order. He was not working on daily wages. He was paid monthly wages. He worked from 1990 to 1995 but he has no document.

6. Management failed to adduce evidence. Evidence of management is closed on 7-4-2011. Thus the management has failed to substantiate his contentions, no evidence is adduced about what are the activities carried out by the IInd party. Workman has produced office order dated 31-12-2010, temporary status given to the employees of IInd party. The evidence of workman that he was continuously working for more than 240 days prior to termination of his service is not shattered. As per terms of reference, the date of termination of workman is not mentioned. However in his statement workman has claimed that his services were terminated from 8-8-95. In his evidence, workman says he worked from 1990 to 1993. It cannot be hurdle in granting relief to the workman. The evidence of workman that he was not paid retrenchment compensation , the approval of Govt. was not obtained remained unchallenged. The evidence clearly shows that services of workman are terminated in violation of Section 25-F, G, H of I.D.Act.

7. Learned counsel for IInd party in support of its argument that burden lies on workman to prove that he was continuously working for 240 days , reliance is placed in ratio held in :

> "MP Electricity Board through its Superintending Engineer and Manoj Kumar and others reported in 2006(109)FLR 1035. Ratio held in the case is order casting burden of proof on shoulder of employer by Industrial Court. That the employee has not continuously worked for 240 days, the order is not valid and quashed."
>
> In present case, evidence of workman about his continuously working for more than 240 days is not shattered. No issue has been framed casting burden on management therefore ratio cannot be applied to case at hand.

8. The evidence clearly shows that service of workman are illegally terminated in violation of Section 25-F, management has not substantiated by evidence that it is not covered as industry therefore the reference is tenable, the contentions of management that State Govt. is appropriate Govt., Central Govt. has no power to make reference. The order of reference is not challenged by IInd party and therefore this Tribunal is bound to decide the reference. I make it clear that reference is tenable.

9. The workman is claiming for reinstatement with back wages. Workman was working for short period. There is no evidence that any king of recruitment process was followed therefore reinstatement of workman cannot be granted. In my considered view, considering length of service, compensation Rs. 75,000 will meet the ends of justice for above reasons, I record my finding on Point No.1 as not proved, 2 in Affirmative, 3 that workman is entitled to compensation Rs. 75,000 and 4 as reference is tenable.

10. In the result, award is passed as under:-

(1) The action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Sena, S/o Narsingh Beel is not legal and proper.

(2) IInd party management is directed to pay compensation Rs. 75,000 to the workman within 30 days from date of publication of award.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1391.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, इंदिरा गांधी राष्ट्रीय मानव संग्रहालय, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/179/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-42012/17/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/179/98) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal and their workman, which was received by the Central Government on 28/04/2014.

[No. L-42012/17/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/179/98

Presiding Officer : SHRI R. B. PATLE

Shri Kachhu,
S/o Nana, H.No.369,
Naya Basera,
Kotra Sultanabad,
Bhopal .....Workman

Versus

The Director,
Indira Gandhi Rashtriya Manav
Sangrahalaya, Shamla Hills,
Bhopal .....Management

AWARD

Passed on this 7th day of April, 2014

1. The Government of India, Ministry of Labour vide its Notification No.L-42012/17/98-IR(DU) dated 11-8-98 has referred the following dispute for adjudication by this tribunal:-

> " Whether the action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Kachhu S/o Nana is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed as Maali Gardner in clear vacancy on 16-6-93. The service record was excellent. He was member of Rashtriya Manav Sangrahalaya Karmchari Sangh. His services were terminated w.e.f. 15-3-95. That he had continuously worked for more than 240 days in calendar year. He was not served notice, no retrenchment compensation was paid to him. The services were terminated in violation of Section 25-H of I.D.Act. on such ground, workman prays for his reinstatement with consequential benefits.

3. Management filed Written Statement. IInd party submitted that it is not covered as industry under Section 2(j) of I.D. Act. That appropriate Government for IInd party is State Govt., Central Govt. has no authority to make reference. Workman was engaged on daily wages w.e.f. 7-8-94. Workman remained absent from work. There are no ground to make out dispute between parties. IInd party denied that workman was appointed against clear vacant post of maali from 16-6-93. That there is no registered Union. The violation of Section 25-F, G, H of I.D. Act is denied by IInd party.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether Indira Gandhi Rashtriya Manav Sangrahalaya is an Industry?	Not proved
(ii)	Whether the management illegally terminated the services of the workman?	Not proved
(iii)	Whether their workmen is entitled to reinstatement with full back wages?	In Negative
(iv)	Whether the reference is maintainable?	Reference is tenable.
(v)	Relief and costs?	As per final order.

REASONS

5. Though workman is challenging his termination for violation of Section 25-F, G, H of I.D. Act, he has not adduced any evidence to substantiate his claim. IInd party claims that it is not covered as industry under Section 2(j) of I.D. Act but no evidence is adduced by IInd party as to what are the activities carried out by it. Thus IInd party failed to substantiate its contention. In absence of above violation of Section 25-F, G, H of I.D. Act are not proved therefore workman is not entitled to reinstatement for reasons given above. I record my finding in Issue No.1 to 3.

6. In the result, award is passed as under:-

(1) The action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Kachhu S/o Nana is legal and proper.

(2) Workman is not entitled to relief prayed by him.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, इंदिरा गांधी राष्ट्रीय मानव संग्रहालय, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/182/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-42012/16/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/182/98) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal and their workman, which was received by the Central Government on 28/04/2014.

[No. L-42012/16/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/182/98

Presiding Officer : SHRI R. B. PATLE

Shri Shankar,
S/o Krishnan, 178, A-I, Sector-A,
BHEL, Govindpura,
Bhopal .....Workman

Versus

The Director,
Indira Gandhi Rashtriya Manav
Sangrahalaya, Shamla Hills,
Bhopal .....Management

AWARD

Passed on this 7th day of April, 2014

1. The Government of India, Ministry of Labour vide its Notification No.L-42012/16/98-IR(DU) dated 11-8-98 has referred the following dispute for adjudication by this tribunal:-

> "Whether the action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Shankar S/o Krishnan is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed as Maali Gardner in clear vacancy on 16-4-93. The service record was excellent. He was member of Rashtriya Manav Sangrahalaya Karmchari Sangh. His services were terminated w.e.f. 6-5-95. That he had continuously worked for more than 240 days in calendar year. He was not served notice, no retrenchment compensation was paid to him. The services were terminated in violation of Section 25-H of I.D. Act. on such ground, workman prays for his reinstatement with consequential benefits.

3. Management filed Written Statement. IInd party submitted that it is not covered as industry under Section 2(j) of I.D. Act. That appropriate Government for IInd party is State Govt., Central Govt. has no authority to make reference. Workman was engaged on daily wages w.e.f. 2-4-95. Workman remained absent from work. There are no ground to make out dispute between parties. IInd party denied that workman was appointed against clear vacant post of maali from 16-4-93. That there is no registered Union. The violation of Section 25-F, G, H of I.D. Act is denied by IInd party.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether Indira Gandhi Rashtriya Manav Sangrahalaya is an Industry?	Not proved.
(ii)	Whether the management illegally terminated the services of the workman?	Not proved.
(iii)	Whether their workmen is entitled to reinstatement with full back wages?	In Negative
(iv)	Whether the reference is maintainable?	Reference is tenable.
(v)	Relief and costs?	As per final order.

REASONS

5. Though workman is challenging his termination for violation of Section 25-F, G, H of I.D. Act, he has not adduced any evidence to substantiate his claim. IInd party claims that it is not covered as industry under Section 2(j) of I.D. Act but no evidence is adduced by IInd party as to what are the activities carried out by it. Thus IInd party failed to substantiate its contention. In absence of above violation of Section 25-F, G, H of I.D. Act are not proved therefore workman is not entitled to reinstatement for reasons given above. I record my finding in Issue No.1 to 3.

6. In the result, award is passed as under:-

(1) The action of the management of Director, Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal in terminating the services of Shri Shankar, S/o Krishnan is legal and proper.

(2) Workman is not entitled to relief prayed by him.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1393.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, व्हीकल फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/65/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-14012/14/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes theAaward (I.D No. CGIT/LC/R/65/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Vehicle Factory and their workman, which was received by the Central Government on 28/04/2014.

[No. L-14012/14/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR-COURT, JABALPUR

No. CGIT/LC/R/65/97

Presiding Officer : SHRI R. B. PATLE

Smt. Rohini Bai, Smt. Geeta,
Shri Rajesh, Smt. Savita & Ku. Pooja
LRs of Shri Rohini Prasad,
S/o Shri Ram Prasad,
H.No.82, Ramnagar,
Vehicle Factory, Jabalpur ....Workman/LRs

Versus

General Manager,
Vehicle Factory,
Jabalpur ....Management

AWARD

Passed on this 31st day of March, 2014

1. As per letter dated 26-2-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/14/96-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of General Manager, Vehicle Factory, Jabalpur (MP) in terminating the services of Shri Rohini Prasad, S/o Shri Ramprasad is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman has submitted statement of claim at Page 3/1 to 3/5. Case of Ist party workman is that he was working as labour semi-skilled, Token No. GNVFJ-62/3229. His service record was unblemished. Chargesheet was issued to him on 1-3-1994. Allegation against him were that on 1-1-94, his duty hour were from 7.30 to 4.30. He entered painting booth No.3 at 6.45 hours (AM). That he had went to No.3, removed welding cables which were kept hidden in the section. That he had removed rubber insulation, he was caught red handed by the security. On this basis chargesheet was issued to the workman. Workman denied charges. Enquiry was conducted against him. He was removed from service after findings of Enquiry Officer that charges were proved. Workman had pleaded that he was not given reasonable opportunity for his defence. Enquiry was not conducted properly, principles of natural justice were not followed. The findings of Enquiry Officer are not supported by evidence. Findings are perverse. There was no application of mind while considering the findings of Enquiry Officer and deposing the punishment. On such ground, workman is praying for his reinstatement with consequential benefits.

3. Management filed Written Statement at Page 6/1 to 6/2. Management denied all material contentions of workman. It is submitted that workman had entered in Plant No.1 and went to painting booth No.3, he had removed rubber insulation of the welding cables, he was caught red handed by the Security Staff, chargesheet was issued to workman. Workman denied charges. Enquiry Officer was appointed after conducting enquiry as per rules. Punishment of removal was imposed. Punishment was legal. Workman was given reasonable opportunity for his defence. IInd party prays for rejection of claim.

4. Enquiry conducted against workman is found proper and legal as per order dated 6-9-2014.

5. Considering pleadings on record and above findings, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges of misconduct alleged against workman are proved?	Partly Affirmative
(ii)	Whether punishment of removal awarded against workman is legal?	In Negative
(iii)	If so, what relief the workman is entitled to?"	As per final order

REASONS

6. As stated above, enquiry conducted against workman is found legal and proper. Therefore the question remains to be decided whether from evidence in Enquiry Proceedings, charges against workman are proved, whether the punishment of removal imposed against him is legal. The statements of witness No.1 Subramanyam not supported the management in cross-examination by Defence Assistant. He submitted report on 1-1-94. The report in question shown to him. The witnesses had confirmed the report Exhibit P-1. However in cross-examination, he says he did not find how workman was allowed to enter the factory. In reply to Q.No.10, he says that he did not see how workman entered through Gate No.1. statement of witness No. 2 & 4 have fully supported management that workman had entered from Gage No.1 around 6.40 hours, they all had gone near plant and noticed that individual entered in plant No.1 from IInd gate around 6.45 hours, they all got some doubt why so early he had entered the plant, they had gone behind him and saw workman entering into painting booth and removing insulation cable rubber. The evidence of witness No. 2 is corroborated by witness No. 4 Narmada Prasad. In his evidence on cross-examination on the point of entering painting booth and removing rubber insulation is not shattered. There is no evidence that workman committed its theft taking rod out of premises dishonestly. The burden of proof in Enquiry proceeding is not similar to the Criminal proceeding. For above reasons. I record my finding in Point No.1 in partly Affirmative.

7. **Point No. 2**- punishment of removal is imposed against workman, the charges alleged against workman are of removing rubber insulation from welding cables. Workman was not a stranger. There was no evidence that he had taken those welding rods out of the painting section to commit theft. Therefore the proved misconduct cannot be said serious. The punishment of removal from service imposed on workman cannot be said proportionate to the proved misconduct. The punishment imposed against workman is excessive and needs to be suitably modified. Workman has died during pendency. Workman cannot be reinstated in service therefore appropriate order deserves to be passed. LRs namely Smt.Rohini Bai, Smt. Geeta, Shri Rajesh, Smt. Savita & Ku. Pooja are brought on record. Widow of deceased workman may get pensionary benefits.

8. Keeping above aspects in view, the award is passed as under-

(1) The action of the management of General Manager, Vehicle Factory, Jabalpur (MP) in terminating the services of Shri Rohini Prasad S/o Shri Ramprasad is not proper and legal.

(2) On account of death of workman, IInd party is directed to give pensionary benefit to widow of deceased workman taking into account continuity of service without back wages.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, ऑर्डनेन्स फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/4/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-14012/118/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/4/93) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Ordnance Factory and their workman, which was received by the Central Government on 28/04/2014.

[No. L-14012/118/91-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/4/93

Presiding Officer : SHRI R. B. PATLE

Smt. Beni Devi,
LR of Shri Bansi Yadav,
Through Shri L.P.Yadav, Advocate,
524, Ranjhi Bazar, Jabalpur .....Workman

Versus

General Manager,
Ordnance Factory,
Khamaria, Jabalpur .....Management

AWARD

Passed on this 2nd day of April 2014

1. As per letter dated 7-1-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/118/91-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in terminating the services of Shri Banshi Yadav, Ex-Labour w.e.f. 6-10-85 is justified? If not, what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/6. Case of workman is that he was employed as labour in Ordnance Factory, Khamaria, Jabalpur, Token No. A-2/30 OFK. He was originally in A-2 section. Thereafter he was transferred to ME Section and allotted Token No. ME64. His work was satisfactory. Around January 1984, his seniors behaved rude with him. He was subjected to harassment. He was assigned other duties. In January 1984, he applied for leave. However his pay was deducted. He was asked to accept less amount of his salary. On his refusal abruptly the deductions were made for absence on duty. That he was permanent employee of IInd party. He was entitled for different kinds of leave. He was not paid full salary for January 1984. Action of the management was not justified. The principles of no work no pay does not apply in his case. The restrictions imposed about his pay were violative of justice.

3. He further submits that he was transferred from A-2 section to ME Section merely on remarks and reports of Foreman who was jealous of the workman. The foreman was having illwill about him. Workman was subject to harassment by foreman. Evenafter his transfer to ME section, workman continued to attend A-2 section. Chargesheet was issued to him for alleging misconduct and willful refusal to carry out order etc. he was suddenly transferred to ME section as per the order of Foreman. The chargesheet and documents were not written in Hindi, enquiry was not properly conducted. He was not given opportunity to cross-examine witness. The enquiry was conducted exparte. On such ground, workman has prayed for his reinstatement with consequential benefits.

4. Management filed Written Statement at Page 2/1 to 2/3. Management submits that workman was employed in A-2 section holding post of Furnaceman (G). He was transferred to ME Section. He was absent from duties disobeying the orders. Chargesheet was issued to him. Workman was placed under suspension. During course of enquiry, workman was asked to appear in the proceeding for his defence, principles of natural justice were followed by Enquiry Officer. However workman failed to participate in the enquiry, enquiry was conducted exparte. Workman was removed from service after receiving report of Enquiry Officer. Workman had submitted application under P.W.Act amount of Rs. 981 was deducted from his wages for January 1984. The objection of workman was about stoppage of his salary till 30-11-86 suffers immaterial effects. Labour Court has passed order for recovery of Rs.31,500 with cost Rs. 100 without properly considering the documents. The order passed by Labour Court for payment of wages was stayed by Hon'ble High Court. IInd party submits that dispute is raised after long lapse of years is biased. On such ground, IInd party prays for rejection of claim of workman.

5. As per order dated 3-2-2014, enquiry is found legal and proper. Both parties did not adduce evidence on other issues.

6. Considering above aspects, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges against workman are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether punishment of dismissal imposed on workman is legal?	In Negative
(ii)	If so, to what relief the workman is entitled to?"	As per final order

REASONS

7. As per order dated 3-2-2014, enquiry against workman is found proper and legal. Question remains to be decided whether the misconduct alleged against workman is proved from evidence in Enquiry Proceedings, whether punishment of removal from service is proper and legal. Record of enquiry proceeding is produced. Workman was served with chargesheet. The document Exhibit M-1 is the memorandum of articles. The articles of charges relates to workman transferred to A-2 Section to ME section on 6-5-86, did not join his duty in ME section. He was attending A-2 section disobeying orders of transfer. The reports of the Foreman Shri M.K.Sain is produced at Exhibit M-2, M-3, M-4. The report in the form of information was sent to General Manager as per document M-5. In his statement of claim, workman has admitted he was transferred from A-2 section to ME section but he was attending A-2 section only. The report of Foreman M-8 shows that workman had not joined duties in ME Section. The document of Enquiry Proceedings are sufficient to prove the misconduct alleged against workman. Therefore I record my finding in Point No.1 in Affirmative.

8. **Point No. 2-** misconduct alleged against workman is proved as per finding in Point No.1, question arises whether punishment of dismissal of workman is legal or he is entitled for reinstatement with consequential benefits. It appears that workman died during pendency. His widow

Smt.Benidevi is substituted as LR. Therefore relief of reinstatement cannot be allowed. In view of misconduct alleged against workman is proved, workman has disobeyed order of his transfer, he failed to join duty in ME section, disobeying of the orders of superiors is certainly a misconduct but the record shows that order of transfer in writing was not served on workman. Oral directions were given to the workman. Therefore the punishment of dismissal from service appears excessive and exorbitant. Workman had died, his widow is substituted on record. Considering above aspects, punishment of withholding increment for 3 years would be appropriate. Accordingly I hold and record my finding on Point No.2.

9. In the result, award is passed as under:-

(1) Action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in terminating the services of Shri Banshi Yadav, Ex-Labour w.e.f. 6-10-85 is not proper.

(2) Punishment of dismissal from service is substituted with withholding increment for 3 years. The order of dismissal of workman is set aside.

(3) Management is directed to reinstate workman with continuity in service without back wages till his death and pensionary benefits be allowed to his widow.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, सिक्योरिटी पेपर मिल, होशंगाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/186/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-16012/4/89-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/186/90) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Secruity Paper Mill, Hoshangabad and their workmen, which was received by the Central Government on 28/04/2014.

[No. L-16012/4/89-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/186/90

PRESIDING OFFICER : SHRI R.B. PATLE

General Secretary,

SPM Karmchari Union,
Security paper Mill,
Hoshangabad .....Workman/Union

Versus

General Manager,
Security Paper Mill,
Hoshangabad .....Management

AWARD

Passed on this 3rd day of April, 2014

As per letter dated 19-9-90 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-16012/4/89-IR(DU). The dispute under reference relates to:

"क्या श्री बी. के. पवार, पेपर बॉय को महाप्रबंधक, प्रतिभूति कागज कारखाना होशंगाबाद द्वारा अधिक उत्पादन के आधार पर उच्च ग्रेड में पदोन्नति न दिया जाना जैसा कि अन्यों को दिया गया है उचित है? यदि नहीं, तो वह किन-किन अनुतोषों के अधिकारी हैं तथा कब से?"

2. After receiving reference, notices were issued to the parties. Union has filed statement of claim showing wrong nomenclature of parties. General Manager is shown as applicant and General Secretary of employees Union as Non-applicant. Hereinafter Union is referred as Ist party and General Manager as lInd party. Statement of claim is filed by Union at page 3/1 to 3/5. Case of Union is that workman Shri B.S.Pawar, T.No. 317 was initially appointed with Security paper Mill Hoshangabad on 21-8-67. Initially he was appointed as Paper boy, he was transferred to Sheet Trimming Section. Presently he was working in Inspection section. That there are separate departmental rules, regulations in the matter of promotion of employees of IInd party SPM. Management entered into agreement with Union about norms for promotion. These norms are inconsistent with rules and regulations of promotions as per the norms employ who gives production of 8 reams is promoted to the post of paper worker. That workman Shri Pawar was not physically buildup to work on machine effectively. He was not in position to give required target, he was denied from time to time. Junior to Pawar appointed in 1975 were promoted. Promotions were given only because of production as per prescribed norms. It is further submitted that management cannot fix norms of production contrary to recruitment rules. The recruitment rules and promotion rules are not produced. It is further submitted

that in 1979, Shri B.S. Pawar achieved production targets. He should have been promoted in 1979. However his keys was not considered for promotion on the ground that disciplinary action was pending against him. So called chargesheet was withdrawn. However action was not taken on the chargesheet therefore denial of promotion to Shri B. S. Pawar on said ground is illegal. That in 1979, representation of Mehta Committee Report was implemented. As per said report, employee working as paper worker in Trimming Section were upgraded as Paper Worker Grade I in the scale of pay Rs. 260-350. The benefit of upgradation was not given to Shri B.S. Pawar. After completion of 12 years service in the Paper Trimming department, he was denied said benefit, employee junior to him were upgraded. Shri B.S. Pawar was upgraded after 1½ years in 1981, promoted as Paper worker Grade-I in pay scale Rs. 260-350.

3. It is further contented that Babulal Kumhar, Gendlal Sagoriya, A.K.Mitra who were junior to him were superseded. They were promoted in the scale 320-400 (pre-revised). That Shri B.S.Pawar belong to SC. He was active member of the Union. He was targeted by the management. He was denied promotions. He was superseded by junior employees. On such ground Union prays that workman is entitled to promotion in the post of Charge Hand Grade-II in Pay scale 1200-1800 from the date Shri Babulal Kumhar and S.K.Tiwari were promoted.

4. IInd party filed Written Statement at page 6/1 to 6/5. It is submitted that IInd party Security paper Mill Hoshangabad was commissioned in the year 1967. That management had settled dispute before conciliation officer. The dispute were repeatedly raised by Shri B.S. Pawar. That the workman was initially appointed on 21-8-67 as Paper boy in Pay Scale 70-85. He was promoted as Paper worker on 1-1-1969 in pay scale 85-110. Shri B.S. Pawar was posted in Trimming Section. He had failed to give production of 7 reams therefore he was reverted to lower grade. The promotion policy in Trimming Section was production oriented. Many persons were promoted and reverted depending upon quantum of production. The details of promotion and reversion of Shri B.S. Pawar from 1971 to 1978 are given. That Shri Pawar never worked satisfactorily. He was reverted of giving short production. He was repeatedly reverted considering his manpower. During 21-12-1978 to 20-1-1979, Shri Pawar had given production of 7 reams. He could not be promoted as disciplinary proceedings are pending against him. On recommendation of Mehta Committee report implemented from 1-3-79, B.S. Pawar was upgraded in Scale 85-110. All other contentions of Union are denied. The junior employees who were giving production as per target were promoted. Such employees were also reverted when they failed to give production as per target. That seniority is not relevant for production in Trimming Section. On such ground, IInd party prays for rejection of claim.

5. Union filed rejoinder reiterating its contentions in statement of claim and additional Written Statement after amendment carried out in Written Statement filed by IInd party reiterating the contentions raised in statement of claim filed by Union.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether denial of promotion to Shri B.S.Pawar Paper Boy by General Manager Security Paper Mill Hoshangabad on the ground of production is justified and legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order

REASONS

7. Union has raised dispute about denial of promotion to workman Shri B.S. Pawar working as Paper boy. The appointment of workman B.S. Pawar as paperboy in 1967 is not in dispute. IInd party management has contented' that promotions are given as per the norms of production achieved by employees. The targeted production is achieved, the employees are reverted back. Workman filed exhaustive affidavit covering most of his contentions in statement of claim at Page 9/1 to 9/5. That he was denied promotion as he failed to give production of 9 reams. That he was not physically buildup to work in machine effectively. In 1979, he had achieved production target, he should have been promoted. Management denied promotion to him as some disciplinary action was pending against him. That so called chargesheet was withdrawn, no action was taken in the chargesheet therefore he could not have been demed promotion in 1979. His further affidavit is devoted that Mehta Committee report was implemented in 1979. He was upgraded to post in pay scale 210- 290. Junior employees appointed in 1975 were given benefit of upgradation . That he claims to be entitled to the post of Grade- II in Pay scale 1200-1800 on par with Shri Babulal Kumhar and S.K. Tiwari, employees junior to him. In his cross-examination, workman says that he should have been given promotion as per seniority. It is wrong that promotion was to be given as per norms of production. That the management had framed rules for promotion on the basis of norms of production. He was reverted by the management when his production was less than the norm fixed and when he had given more production, benefit of promotion was given to him. Mehta committee report was introduced from 1979. Thereafter agreement was entered between Union and the management. On basis of said agreement, he was given upgraded post. He claims that he should have been promoted as per the production given by him. The so called norms of promotion on basis of

production any rules are not produced by the management neither such rules are referred to the workman.

8. Management's witness Shri Sahadevan Pillai filed affidavit of his evidence covering most of the contentions of IInd party management that promotion was linked with the norms of production and revered many times during 1970 to 1978. That workman Pawar has not given promotion as per prescribed norms. Mehta Committee Report was implemented. The employees were upgraded according to seniority roster point. In 1979, after implementation of Mehta report, the workers were upgraded in their respective sections. At that time Pawar was working as Paperboy, he was upgraded as paper worker. As he was not giving production as per norms, junior employees giving production as per the prescribed quota were promoted. That upgradation in Pay Scale Rs. 210-290 was result of implementation of Mehta Committee Report. It was done according to seniority. Ist party workman did not find place in seniority.

9. Management witness in his cross-examination says workman was appointed as Paper boy in 1967. That promotion and recruitment in his department has its prescribed policy. Ist party workman was promoted to Grade- I, II. The reversion of workman was not by way of punishment. Therefore chargesheet was not received to him. His work was found unsatisfactory but showcause notice was not issued to workman. Circulars are issued about the working targets. If the targets are not achieved, the employee is reverted. There is no mention of such rules in the production policy. Management witness was unable to tell Babulal had not given production as per norms and he was promoted. Mehta Committee Report was introduced in 1979. Management's witness was unable to tell anything about Mehta Committee report. The document Exhibit W-1 is appointment order, the name of workman is not appearing in it. Exhibit W-2 is order closing the matter of chargesheet issued to workman dated 17-7-80. Ehibit W-3 is copy of establishment of office order No. 977, name of workman is appearing at Sl. No. 208, pay scale Rs. 214. Exhibit W-4 is copy of office order No. 1209 giving upgradation benefits to the employees, name of workman is appearing at Sl.No.152 in pay scale Rs.1230/- from 1-4-93. The evidence of workman that in 1979 he had achieved production norms but he was denied promotion on the ground that some disciplinary proceedings were pending, the chargesheet was withdrawn is not challenged by IInd party. When workman has achieved the norms of production, the chargesheet was also withdrawn as per Exhibit W-2. There was no hurdle for upgrading workman in 1979. Thus even if the rules for promotion as per norms of production are accepted, the management failed to consider claim of workman for upgradation after withdrawal of chargesheet and he when had achieved norms of production in 1979. The action of management denying promotion/upgradation to workman and giving said benefit to the junior employees is illegal. For above reasons, I record my finding in Point No.l in Negative.

10. In the result, award is passed as under:-

(1) Action of the IInd order party management denying promotion/upgradation in pay scale 260-350 is not proper.

(2) IInd party is directed to give benefit of up gradation to workman of pay scale Rs. 260-350 from date of withdrawal of chargesheet dated 17-7-80. The consequential benefits also be given to the workman.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1396.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिस, रायपुर डिवीज़न के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/114/89) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/62/87-डी. II (बी)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/114/89) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Sr. Spudt. of Post Office, Raipur and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/62/87-D.II (B)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/114/89

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Prakash Kumar Sahu,
Gram Kirkal,
Tehsil Rajim,
Raipur .....Workman

Versus

Sr.Supdt. of Post Office,
Post office Raipur Division,
Raipur .....Management

AWARD

Passed on this 4th day of April, 2014

1. As per letter dated 19-5-89 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/62/87-D-II(B). The dispute under reference relates to:

> "Whether the action of the management of Sr. Suptd. of Post Office, Raipur Division, Raipur terminating services of Ravi Prakash Sahu, Addnl. Divisional Milk Carrier/ Delivery Agent from 27-9-87 is legal? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices have been issued to the parties. Ist party workman submitted his statement of claim at Page 3/1 to 3/4. Case of workman is ex-post master, Branch Kirvai. Rajendra Kumar Sharma was promoted as teacher. He had resigned as post master on 24-11-86. After his retirement Vyas Narayan Sahu was holding post of postmaster. Ist party workman was engaged in pay scale Rs.425. He was continuously working from 28-11-86 to 26-9-97 for 299 days. Letter dated 2-1-87 was issued by Suptd. of Post Office, Raipur with object to regularize service of workman. That workman had submitted all documents from 13-9-82. As per letter dated 3-7-87, Sr. Suptd. Post office Raipur had given directions for completing the formalities. Accordingly workman have completed required formalities. On 26-9-87, Sr. Supdt. Post Office therefore orally relieved workman and one Tejram was appointed as Post Master. Vyas Narayan was appointed as Postman. Workman submits that Tejram Sahu had received education upto 8th standard. He was less educated than workman. The workman had better experience and qualification than Tejram Sahu. Workman was orally terminated and appointing Tejram is illegal. Workman further submits that his services are terminated without notice, retrenchment compensation is paid to him. His service record was excellent. His character was good. He was illegally terminated by IInd party. On such grounds, workman prays for reinstatement with consequential benefits.

3. IInd party submitted Written Statement at 10/1 to 10/2. It is contented by IInd party that Rajendra Kumar Sharma EDBPM Kirwai had submitted resignation on 24-11-86. He did not wait for relieving. He handed over charge to Shri Vyas Narayan Sahu on 27-11-86. Rajendra Kumar Sharma had unauthorisely god relieved. Vyas Narayan sahu was performing duties of EDBPM from 27-11-86. A substitute was provided in place of EDMC/DA on his own responsibility from 28-11-86. After selection, Tejram Sahu was appointed as EDBPM Kirwai following the rules and procedure on 26-9-87. That workman was appointed by his brother Vyas Narayan as substitute. His services were in nature of staff gap arrangement till the vacancy was filled regularly. The order dated 24-8-87 was issued for discontinuing workman. The appointment of workman as EDBPM was considered by his real brother working as EDMC/DA in same post office. Contravening order dated 22-1-86 by C.O.STA. after reversion of Vyas Narayan Sahu from post of branch Post Master Kirwai, workman was automatically discontinued. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Sr.Suptd.of Post Office, Raipur Division, Raipur terminating services of Ravi Prakash Sahu, Addnl. Divisional Milk Carrier/ Delivery Agent from 27-9-87 is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

5. Workman is challenging termination of his services for violation of Section 25-F of I.D.Act,. he claims to have been appointed in Pay Scale Rs. 425 and work continuously for 99 days. His services are terminated without notice and paid retrenchment compensation. IInd party submits that Ist party workman was appointed as a substitute by his own brother in contravention of certain office order. After reversion of brother of workman, services of workman were automatically discontinued. Workman filed affidavit of his evidence covering most of his contentions in statement of claim. That he was appointed on 28-11-86 and he continued to work till 26-9-87. His service was satisfactory. He was holding permanent post. After termination, he was not called in the department. The work was of regular nature. In his cross-examination, workman says his name was sponsored though Employment Exchange. However said fact is not pleaded in his statement of claim. He denies that as the post was lying vacant therefore he was engaged for the work. He denies that he was not engaged against regular post.

6. IInd party filed affidavit of evidence of Shri Rajendra Kumar Sharma. However the management's witness failed to appear for cross-examination. Then management filed affidavit of evidence of Shri D.P.Yadav said witness also

failed to appear for his cross-examination therefore evidence on affidavit of both witness of the management cannot be considered. The pleadings and evidence of workman itself shows that he was appointed as the regular post was lying vacant. Thus the appointment of workman is as substitute and not appointed against regular vacant post. The selection process was not followed. Workman has not proved certificate issued by one Sonaram Sahu, Sarpanch. The appointment order is not produced as workman was not appointed against regular post following selection procedure. He was appointed as substitute. The discontinuation of service of workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) Action of the management of Sr.Suptd.of Post Office, Raipur Division, Raipur terminating services of Ravi Prakash Sahu, Addnl. Divisional Milk Carrier/ Delivery Agent from 27-9-87 is legal and proper.

(2) Workman is not entitled to relief prayed by him.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1397.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 578/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/382/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 578/ 2005) of the Central Government Industrial Tribunal/ Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/382/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 578/2005

Registered on 23.8.2005

Sh. Pawan Kumar
S/o Sh. Rattan Lal,
C/o Jeet Singh,
President, Telecom Labour Union,
Mohalla Harinagar, Lal Singh Basti Road,
Bathinda. .....Petitioner

Versus

The General Manager,
Telecom, Bathinda .....Respondents

APPEARANCES :

For the workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on- 4-4-2014

Central Government vide Notification No. L-40012/ 382/99/ IR(DU) Dated 9.2.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Sh. Pawan Kumar S/o Sh. Rattan Lal is legal and justified? If not to what relief the workman is entitled and from which date?"

According to the workman, he served in Telephone Exchange Budhladha on a permanent job from 22.8.1994 and used to draw Rs.2138 as monthly wages. His services were terminated on1.3.1999 in violation of the provisions of the Act. That persons junior to him were retained in service and even new persons were recruited without calling him. That he be reinstated in service.

Respondent management filed written reply denying the relationship and pleaded that workman was never employed by the management. That the management used to hire labour through the contractor and the applicant may have worked as a casual labour for the contractor. That since he was not an employee of the respondent management, the provisions of the Act are not applicable to it.

In support of its case workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition. He has also examined Durga Prasad who has stated that he joined service with the

management in 1995. That the workman also worked as a daily wager.

On the other hand the management examined Ashok Kumar and Baldev Krishan; who have filed their respective affidavits reiterating the stand taken by the respondent management.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

Learned counsel for the workman carried me through the statement of the workman and submitted that his statement get corroboration from the statement of Durga Prasad and therefore it be held that workman was an employee of the respondent management whose services have been illegally terminated.

I have considered the contention of the learned counsel.

It may be added that according to the workman he worked on a permanent job from 22.8.1994 to 1.3.1999 and was paid Rs.2138 as monthly wages. There is nothing on the file to suggest that there was any such vacancy in the Telephone Exchange Budhladha at the relevant time and any procedure was followed for filling up that vacancy. According to the workman he was paid Rs.2138 per month but no record has been summoned from the department to establish that he was paid any amount by way of wages by the department. From the simple assertions that workman worked with the respondent management drawing monthly wages of Rs.2138 do not establish that he was an employee of the respondent management. It is the definite stand that management used to hire labour through contractor and the workman may have worked under the contractor.

The statement of Durga Prasad is also of no help to the workman as he was not appointed by the management in his presence. If he has worked in the department, he may have worked as a man of the contractor.

Thus the workman has failed to prove by leading cogent evidence on the file that he was an employee of the respondent management and his services have been terminated and he is not entitled to any relief. The reference is accordingly answered against the workman.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1398.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 808/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/174/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 808/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/174/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 808/2005

Registered on 6.9.2005

Miss Babita, C/o Sh. N.K. Jeet,
President, Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road, Bathinda. .....Petitioner

Versus

The General Manager, Telecom,
Bathinda. .....Respondents

APPEARANCES

For the workman : Sh. Charanjeet, Adv.

For the Management : Sh. Anish Babbar, Adv.

AWARD

Passed on-3.4.2014

Central Government vide Notification No. L-40012/174/99-IR(DU) Dated 29.9.1999, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Miss Babita is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that she served as a Clerk in TRA O/o GMT Bathinda on a permanent job from 27.1.1997 and drawing a salary of Rs.2140 per month. Her services were terminated on 31.12.1997 in contravention of the provisions of the Act. That the

persons junior to her were retained in service and even new hands have been employed without calling her. That termination of her services is illegal and she be reinstated in service with all the benefits.

Respondent management filed written reply controverting the averments and further pleaded that GMT Bathinda entered into an agreement with Sh. Amarjit Singh and Sh. Ashok Kumar Garg for the supply of contract labour in the year 1996 and 1997 and the workman may have worked under the aforesaid contractor on daily wage basis. She is not an employee of the respondent management. She was not paid any wages by it. Thus the relationship of employer and employee has been denied by the respondent management.

In support of its case the workman appeared in the witness box and filed her affidavit reiterating the case as set out in the claim petition and further deposed therein that she was to draw Rs.2138 per month but was paid only Rs.1200 per month. That she was employed on the job by A.O. Telecom, Bathinda who used to pay her the wages. That the attendance register and the record relating to wages paid to her is with the respondent management. She has placed on record photocopy of daily dairy register consisting of 46 pages.

On the other hand the management examined Baldev Krishan who filed his affidavit reiterating the stand taken by the respondent management in the written statement.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was argued by the learned counsel for the workman that the workman has worked in the department from 27.1.1997 to 31.12.1997 and the same is also evident from the copies of the daily diary register Exhibit WW1/1 and since the department has failed to produce any record or examine the contractor and therefore, it is reasonable to presume that the workman was actually an employee of the respondent management whose services have been illegally terminated.

I have considered the contention of the learned counsel.

It may be added that according to the workman she was employed by A.O. Telecom, Bathinda who used to pay her wages. There is nothing on the file to suggest that who was the A.O at the relevant time in the office nor the said person has been examined by the workman to establish that she was actually engaged by him. Again there is nothing on the file to show that the said person was ever authorized to engage the workman as Clerk. Thus the engagement of the workman as Clerk with the respondent management is not proved. The workman has relied on the copies of the daily diary register which are at page 21 to 65 of the file. But the entries therein are in the hand of the workman herself and are not verified by any official of the respondent management. Even the said entries do not establish that the workman was actually engaged by the respondent management whose definite case is that a contractor used to supply labour and the workman may have worked under the contractor. Since it is not proved that the workman was employed by the management, it was not necessary for the management to examine contractor. According to the workman she was drawing Rs.2140 per month. But in her affidavit she has deposed that she was paid only Rs.1200 per month which goes a long way to show that she was not actually employed by the department nor any record has been summoned to establish that the department has paid her any salary. Thus it cannot be said that she was ever employed by the management and her services were terminated by it.

In result, it is held that workman has failed to prove that she was employed by the respondent management and her services were terminated and she is not entitled to any relief and the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1399.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 812/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/264/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 812/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/264/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 812/2005

Registered on 7.9.2005

Sh. Shinder Pal, C/o Jeet Singh,
President, Telecom Labour Union,
Mohalla Harinagar,
Lal Singh Basti Road, Bathinda. .....Petitioner

Versus

The General Manager,
Telecom, Bathinda. .....Respondents

APPEARANCES

For the workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-3.4.2014

Central Government vide Notification No. L-40012/264/99/ IR(DU) Dated 18.11.1999, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Sh. Shinder Pal is legal and justified? If not to what relief the workman is entitled?"

In response to the notice the workman submitted statement of claim pleading that he served the respondent management as Telegraph Man in DTO Bathinda on a permanent job from 28.11.95 to 31.7.97 and Rs.2140/- were paid to him as monthly wages. That his services were terminated on 31.7.1997 in contravention of the provisions of the Act and the persons junior to him were retained in service. That new hands have been recruited without calling him. That his termination is illegal and he be reinstated in service with all the benefits.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. That the management did not pay the workman any salary. That management used to hire labour through a contractor for the performance of emergency work and used to make payment to the contractor who was paying the amount to the labour. That workman was not an employee of the respondent management and his services were not terminated by it.

Parties led their evidence.

In support of its case the workman appeared in the witness box and examined Surinder Kumar and Ashok Kumar.

Workman filed his affidavit supporting his case as set out in the claim petition.

Surinder Kumar has stated that he worked in the Telegraph Office in Bathinda in 1992 where the workman was working as a katcha worker and used to deliver telegrams and serve water etc.

Ashok Kumar was examined to produce the record i.e. duty slips of the office from 1995 to 1997, attendance register of casual labour and telegram receipts issued to the workman for the said period. He has stated that the record is not available in the Department.

On the other hand the Department has examined Baldev Krishan who filed his affidavit reiterating the case of the respondent management as set out in the written statement.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was contended by the learned counsel for the workman that the workman worked with the respondent management from 28.11.1995 to 31.7.1997 on a permanent job and the same stands proved from the duty slips placed on the file and found at page No.29 to 119 of the file and further get corroboration from the statement of Surinder Kumar. The learned counsel further argued that the management did not examine the contractor to establish that the workman was actually an employee of the contractor. Management also did not produce the record summoned by the workman and therefore it is valid to draw an inference that workman was an employee of the respondent management.

I have considered the contention of the learned counsel.

It may be added that the definite case of the workman is that he worked with the respondent management from 28.11.1995 to 31.7.1997 on a permanent job and used to draw Rs.2140/- as wages per month. Respondent management is a statutory body having its rules and regulations for appointing its employees. There is nothing on the file that any rule or procedure was followed when the workman was allegedly appointed by the respondent management. According to the workman he used to draw Rs.2140/- as wages. Again no record has been summoned from the respondent to prove that it used to pay the said sum to the workman. From the mere allegations that the workman worked with the respondent for a said period, it cannot be said that the workman was an employee of the respondent management.

Respondent management has taken the stand that it used to get labour through a contractor for performing emergency work. It is nowhere pleaded that the workman was actually an employee of the contractor. Thus if the management did not examine the contractor or summon the record, the same do not prove that the workman was an employee of the respondent management.

The workman summoned certain record from the management and it is the definite stand of the management that workman was never its employee and in the circumstances, the respondent management was not to maintain any record regarding the workman. The duty slips placed on the record also do not establish that the workman was an employee of the respondent management as the author of the said slips has not been examined and the same are not proved on the file.

So far as the statement of Surinder Kumar is concerned he simply stated that the workman used to work as a katcha worker and when it is so he may have been provided by the contractor and his statement do no establish that the workman was actually employed by the respondent management.

In result, it cannot be held that workman was an employee of the respondent management and his services were terminated by it. Accordingly the reference is answered against the workman and he is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1400.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 552/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/310/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 552/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/310/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 552/2005

Registered on 23.8.2005

Smt. Charan Kaur, C/o Sh. N.K. Jeet,
27349, Lal Singh Basti Road,
Bathinda. .....Petitioner

Versus

The General Manager,
Telecom, E-10 B Building,
Behind HPO, Bathinda. .....Respondents

APPEARANCES

For the workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-2.4.2014

Central Government vide Notification No. L-40012/310/2001-IR(DU) Dated 5.2.2002, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Smt. Charan Kaur, W/o Sh. Gurjant Singh, Sweeper, w.e.f. 1.3.99 is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that she served with the respondent management at Jhuneer as Sweeper on a permanent job from 14.1.1986 drawing Rs.200/- as monthly wages. Her services were terminated on 1.3.1999 in contravention of the provisions of the Act and the persons junior to her were retained in service and even new hands were recruited without calling her. That she be reinstated in service.

Respondent management filed written reply pleading that the department imposed a partial ban on 30.3.1985 for engagement of casual labourer for any type of work and a complete ban was imposed vide order dated 22.6.1988. It is denied that claimant was appointed on a permanent job and pleaded that she was employed on contract basis and she was engaged as a part time sweeper for 0.53 hours in a day on need basis only. That she is not an employee of the management. All other averments have been denied.

Parties led their evidence.

Workman appeared in the witness box and filed her affidavit reiterating the stand taken by her in the statement of claim. She has further deposed that the department promised her minimum wages but she was paid only Rs. 200 per month.

On the other hand respondent management examined Baldev Krishan who filed his affidavit.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar counsel for the management.

It was argued by the learned counsel for the workman that workman was actually employed by the respondent management for the period 14.1.1986 to 1.3.1999 which get corroboration from the fact that the department did not produce any record and also had given evasive reply regarding her salary and therefore it is just to presume that she was an employee of the respondent management whose services have been illegally terminated.

I have considered the contention of the learned counsel.

The case of the workman is that she served as a Sweeper in Telephone Exchange Jhuneer on a permanent job from 14.1.1986 to 1.3.1999 and her monthly wages were Rs. 200. Thus it was for her to prove that she worked on a permanent job for the said period, but there is nothing on the file to suggest that either there was any permanent post against which the workman was employed or she actually worked regularly. If she was employed on a permanent job, she must have drawn the salary as per the pay scale but according to her she used to draw Rs.200/- for the entire period from 14.1.1986 to 1.3.1999 which falsify her case that she worked against a permanent job. Respondent management has clearly pleaded that workman was employed as a part time sweeper on contract basis and she was engaged as such for 0.53 hours in a day on need basis only. If she was engaged on need basis and as a part time worker the same do not establish that she was a regular employee or casual employee of the respondent management who has certain rules and regulations for giving employment and nothing has come on the file that any such rule was followed before employing the workman. Thus it cannot be said that the workman actually worked on a permanent job for the period in question and her services were terminated in contravention of the provisions of the Act. If the management did not give a specific reply regarding her salary, no adverse inference can be drawn against it as according to the management the workman was employed purely on need basis as part time sweeper and in this situation if the management was unable to give a specific reply regarding her salary the same do not itself shows that the workman was an employee of the respondent management.

In result, it cannot be held that workman was an employee of the respondent management and her services were terminated by it. Accordingly the reference is answered and the workman is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1401.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 271/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/444/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 271/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/444/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 271/2005

Registered on 11.8.2005

Miss Vijay Laxmi, C/o Sh. N.K. Jeet,
President, Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road, Bathinda .....Petitioner

Versus

The General Manager,
Telecom, Bathinda .....Respondents

APPEARANCES

For the Workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 2.4.2014

Central Government vide Notification No. L-40012/444/99-IR(DU) Dated 17.2.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-

section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Ferozepur in terminating the services of Miss Vijay Laxmi D/o Sh. J.P. Pandey is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that she served as a clerk in the Office of A.O (TRA) Ferozepur on a permanent job since 1.6.1995 drawing monthly wages of Rs. 2138 per month. Her services were terminated on 5.3.1999 in violation of the provisions of the Act. That the persons junior to her were retained in service and even new hands were recruited without calling her. That the termination of her services is illegal and she be reinstated in service.

Respondent management filed written reply controverting the averments and pleaded that she was never employed by the management. That the management used to engage labour through the contractor to do emergency work and the workman was neither employed nor paid by it.

Workman filed rejoinder.

In support of its case the workman appeared in the witness box and examined Smt. Neelam Kumari.

Workman filed her affidavit reiterating the case as set out in the claim petition and further deposed that she was employed by Mr. Sharma A.O. who used to pay her the wages. That A.O. used to allot her the work and used to sign the documents.

Neelam Kumari has deposed in her affidavit that she had seen the workman working as Clerk in the Office of A.O. (TRA) Ferozepur from 1.6.1995 to 5.6.1999.

The workman has also examined Narinder Kumar, an official of the respondent management. He was summoned to produce the record and he brought the attendance register of TRA Section Ferozepur and placed on record its copies as WW3/450 and further stated that the remaining record summoned was not maintained in the office.

On the other hand the management examined Sh. D.L. Purohit who filed his affidavit reiterating the stand taken by the management.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar counsel for the management.

It was argued by the learned counsel for the workman that workman was employed as Clerk who continuously worked from 1.6.1995 to 5.3.1999 when her services were arbitrarily terminated. In support of his contention he has carried me through the photocopies of the diary and submitted that the work done by the workman during the period 1.6.1995 to 30.4.1999 has been recorded therein which clearly prove that workman was an employee of the respondent management and this fact also get corroboration from the statement of Smt. Neelam Kumari examined by the workman. The learned counsel further submitted that the department intentionally did not produce the record and therefore adverse inference be drawn against it to hold that workman was an employee of the respondent management.

I have considered the contention of the learned counsel.

The definite case of the workman is that she served the respondent management against a permanent job getting a salary of Rs. 2138 per month and further deposed in her affidavit that she was employed by Mr. Sharma A.O. (TRA) Ferozepur. Suffice it to say that respondent management is governed by certain rules and regulations for employing the persons in its office and there is nothing on the file to suggest that any procedure was followed for appointing the workman as Clerk in the office. The A.O. Sharma has not been examined by the workman to prove that she was actually engaged by him. No record has been produced on the file to show that the department ever has paid her any wages. Therefore it cannot be said that she was ever an employee of the respondent management and in the circumstances, the oral statement of Neelam Kumari is of no help to the workman.

The photocopies of the daily diary work done Exhibit WW1/2 to WW1/449 are in the hand of the workman herself and are not signed by any official of the respondent management and do not establish by any stretch of imagination that the workman ever worked as an employee of the respondent management. Narinder Kumar brought the attendance register as summoned by the workman but nothing has been pointed out to establish that attendance of the workman was ever marked therein which again rules out the possibility that the workman ever worked in the department as its employee. Narinder Kumar has specifically stated that the other record summoned by the workman i.e. rolls of payment of wages of casual labourer and work allotment to them and attendance register of the casual labourers is not maintained in the office and as such could not be produced and no inference is to be drawn to hold that the workman was an employee of the respondent management.

Thus in result, it is held that workman has failed to prove by leading cogent evidence that she was an employee of the respondent management and her services were terminated. Accordingly the reference is decided against her and she is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1402.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 656/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/194/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 656/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/194/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 656/2005

Registered on 24.8.2005

Sh. Ashok Singh, C/o Sh. N.K. Jeet,
27349, Lal Singh Basti Road,
Bathinda. .....Petitioner

Versus

The General Manager,
Telecom, E-10 B Building,
Behind HPO, Bathinda. .....Respondents

APPEARANCES

For the Workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 2.4.2014

Central Government vide Notification No. L-40012/194/2001-IR(DU) Dated 5.9.2001, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:-

"Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Sh. Ashok Singh S/o Sh. Godhu, is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that he served as Cable Jointer in Telephone Exchange, Mansa on a permanent job from 1.7.1993 and used to draw Rs. 2138 as monthly wages. His services were terminated on 1.3.1999 in contravention of the provisions of the Act. That the workmen junior to him were retained in service. Since the termination of service was illegal, he be reinstated in service with all the benefits.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. That the workman was never paid any wages by the management who used to get labour for the performance of petty jobs from contractor. The workman may have been engaged by the contractor but the workman was never employed by the management at any point of time nor he was paid any salary. Further objection that this Court had no jurisdiction to try the reference was also taken.

Parties led their evidence.

In support of its case, the workman appeared in the witness box and examined Ashok Kumar and Parmod Singh.

Ashok Kumar workman filed his affidavit reiterating the case as set out in the claim petition and further mentioned the work performed by him and the places where he did the duty.

Parmod Singh has deposed that he was working in Mansa in 1979 as a lineman and the workman also worked there and had come from Jhuneer Exchange.

Ashok Kumar, an official of the respondent management was summoned to produce the record i.e. messenger delivery slips, progressive reports of work done and fault register of Telephone Exchange Jhuneer. But he stated that the summoned record is not available and the same were not prepared by him.

On the other hand the management examined Baldev Krishan who had reiterated the case of the management as set out in the written statement.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

The learned counsel for the workman carried me through the statement of the workman and submitted that his statement get corroboration from the statement of Parmod Singh and since the department did not produce any record as summoned by the workman, it is proved on the file that the workman was employed by the respondent management and he worked under it and his services have been arbitrarily terminated.

I have considered the contention of the learned counsel.

The definite stand of the respondent management is that the workman was never employed by it. That the management did not pay him any wages. The workman summoned certain record, as stated above but Ashok Kumar who appeared in the witness box and specifically stated that the record is not available. Since the management denies the relationship of employer and employee, it cannot be said that any record was maintained regarding any service of the workman. Thus if no record is produced by the management, the same itself do not prove that the workman was an employee of the management.

Parmod Singh has stated that the workman worked in Mansa Exchange in 1997 as a labourer and further stated that the manpower was supplied to the office through J.E. Thus if it is taken that the workman worked at Mansa Exchange for some time, he may have been sent there by the contractor and workman cannot drive any benefit from the statement to reach at the conclusion that he was actually appointed by the respondent management.

There is a self-serving statement of the workman which also do not lead to the conclusion that he was appointed by the management or he was ever paid any wages by it. It is not denied that management has its rules and regulations for employing the persons and nothing has come on the file to show that any such procedure was followed before giving him appointment to the workman. There is no cogent evidence on the file that he was ever an employee of the respondent management and when it is so, it is hard to hold that his services were terminated.

In result it is held that workman has failed to prove that he was an employee of the respondent management and his services were terminated and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1403.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 809/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/176/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 809/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014.

[No. L-40012/176/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No.809/2005

Registered on 6.9.2005

Miss Sweety Singla,
C/o The President,
Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road, Bathinda. .....Petitioner

Versus

The General Manager,
Telecom, Bathinda. .....Respondents

APPEARANCES

For the Workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 4.4.2014

Central Government vide Notification No. L-40012/176/99-IR(DU) Dated 29.9.1999, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Miss Sweety Singla is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that she served as a Clerk in TRA, O/o GMT, Bathinda on a permanent job from 27.1.1997 and was paid Rs. 2140 as monthly wages. Her services were terminated on 31.12.1997 without any charge-sheet,

inquiry and compensation. That the persons junior to her were retained in service and new hands were recruited without calling her. That she be reinstated in service with all the benefits.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee and further pleaded that the applicant was never appointed as Clerk by the management. General Manager Telecom entered into an agreement dated 26.6.1996 and 1.4.1997 with the contractor for supply of contract labour who used to supply labour to the department and the applicant may have been employed through the contractor on need basis. That she cannot claim herself to be an employee of the respondent management.

Parties led their evidence.

In support of its case the workman appeared in the witness box and filed her affidavit reiterating her case as set out in the claim petition. She has further stated that work was allotted to her by JAO/HC who used to supervise her work. That she used to prepare telephone bills from local call statements and Trunk Call Tickets for the Telephone Numbers pertaining to 256 and 257 Group. She named some of the employees who worked with her as regular employees and some as casual workers. She has also placed on record photocopies of the Daily Diary Register and Attendance Register.

On the other hand the management has examined Baldev Krishan who filed his affidavit supporting the case of the management and further deposed that the applicant was not the employee of the management.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was argued by the learned counsel for the workman that workman was employed as a Clerk by the respondent management and she worked at Bathinda from 27.1.1997 to 31.12.1997 when her services were terminated in contravention of the provisions of the Act. In support of his contention he further submitted that the management did not produce the record maintained by it and also did not examine the contractor under whom the workman allegedly worked and these facts go to prove that workman was actually an employee of the respondent management which further get corroboration from the statement of the workman herself.

I have considered the contention of the learned counsel.

The definite case of the workman is that she worked as a Clerk on a permanent job from 27.1.1997 to 31.12.1997. Respondent management is a statutory body having its rules and regulations and follow certain procedure before filling the post in the office. There is nothing on the file that any procedure was followed before employing the workman as Clerk in the Office. According to the workman she was drawing Rs.2140/- as monthly wages but during cross-examination she has stated that she was paid only Rs.1200/1300/- which goes a long way to demolish her case that she worked as a Clerk and that too under the respondent management. She has placed on record photocopies of the daily diary work done statement for the month of July 1997 to December 1997 and certain other documents to prove that she actually worked as a Clerk with the Department but the author of the said documents has not been examined to prove the same and therefore no reliance can be placed on the said documents to hold that these documents were prepared in the office of respondent management. She has summoned certain record from the respondent management to which a definite reply was filed that the record is not maintained by the department regarding the persons who were engaged by the contractor. She has stated that her attendance was used to be recorded by Sh. J.S. Mann and were checked by A.O. Desraj but both of the above said persons has not been examined to support her version that she attended the office as an employee of respondent management.

The definite stand taken by the management is that it used to hire labour from the contractor on need basis and if the management has no examined the contractor or summoned his record the same do no show that the applicant was an employee of the respondent management as it is for the workman to prove by leading cogent evidence that she was actually employed by the management which she has failed to prove by leading any cogent and convincing evidence. It was contended that the contractor used to supply labourers to the management not the Clerks and since the workman worked as a Clerk it be presumed that she was an employee of the respondent management. Admittedly Baldev Krishan has stated that contractor only used to supply labour to the department and not Clerks but he has also stated that Clerks are the regular employees of the department. There is no evidence except the bare statement of the workman that she worked as a clerk with the department. Thus it cannot be said that she did work as a clerk with the department. When the workman is not proved to be an employee of the respondent management, it is needless to say that her service record was to be maintained by the management.

In result it is held that the workman has failed to prove that she was an employee of the respondent management and her services were terminated in contravention of provision of the Act and she is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1010/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2014 को प्राप्त हुआ था।

[सं. एल-40012/272/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 1010/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 28/04/2014

[No. L-40012/272/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. 1010/2005

Registered on 17-9-2005

Sh. Major Singh,
C/o Sh. N.K. Jeet,
27349, Lal Singh Basti Road,
Bathinda .....Petitioner

Versus

The General Manager, Telecom,
E-10 B Building, Behind HPO,
Bathinda. .....Respondents

APPEARANCES :

For the Workman : Sh. Charanjeet Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 3-4-2014

Central Government vide Notification No. L-40012/272/2001 IR (DU) Dated 31-12-2001, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :—

"Whether the action of the management of General Manager Telecom, Bathinda in terminating the services of Sh. Major Singh S/o Sh. Pritam Singh, workman w.e.f. 1.3.99 is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that he served as a workman in Telephone Exchange, Mansa on a permanent job from 14.10.1993 and was drawing Rs. 2138/- per month as wages. His services were illegally terminated on 1.3.1999 and against the provisions of the Act. That the persons junior to him were retained in service.

Respondent management filed written reply denying the relationship and pleaded that the workman was neither appointed nor paid by the management at any time. That the management used to engage labour through the contractor and the workman may have been engaged by the contractor. That the workman was never employed by the management. Further objection that this Court had no jurisdiction to try the reference was also taken.

Parties led their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management examined Baldev Krishan who filed his affidavit reiterating the stand taken by the respondent management.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was argued by the learned counsel for the workman that workman was an employee of the management who intentionally withheld the record and adverse inference may be drawn against it to hold that the workman was appointed by the management and his services were illegally terminated.

I have considered the contention of the learned counsel.

It is the definite case of the workman that he worked with the management on a permanent job from 14.10.1993 to 1.3.1999 and it is for the workman to prove the said fact by leading cogent and convincing evidence on the file.

The respondent management is a statutory organization having its rules and regulations and nothing has come on the file that any procedure was followed while employing the workman. Again no evidence has come on the file to show that the workman was ever paid the wages by the management. From the bare statement of the workman it cannot be held that he was an employee of the respondent management, more especially in view of the stand taken by the respondent management that they used to employ labour through the contractor and the workman may have worked for the contractor. Thus, it cannot be

said that workman was an employee of the management and was paid wages at any point of time and when it is so it cannot be said that his services were terminated by the management.

In result, it cannot be held that workman was an employee of the respondent management and his services were terminated by it. Accordingly the reference is answered and the workman is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1405.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/04/2014 को प्राप्त हुआ था।

[सं. एल-41011/16/2013-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the management of the North West Railway and their workmen, received by the Central Government on 24/04/2014.

[No. L-41011/16/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRESENT : BHARAT PANDEY, Presiding Officer

I.D. 32/2013

Reference No.L-41011/16/2013-IR(B-I)

dated: 7.6.2013

Mandal Mantri,
North West Railway Karmachari
Sangh, Ajmer Mandal, 370/E,
Babu Line, Railway Colony,
Topada, Ajmer

V/s

1. The Divisional Railway Manager,
North West Railway,
Ajmer

2. Sr. Divisional Manager,
North West Railway,
Ajmer.

AWARD

25.3.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial Dispute to this tribunal for adjudication:-

> "Whether the action of the management of North West Railway, Ajmer in imposing penalty i.e. reduction of Pay Band from Rs. 4600 to Pay Band 4200 to Sh. P. K. Srivastava w.e.f. 9.11.12 is legal and justified? If not, to what relief he is entitled ?"

2. After receipt of reference it was registered on 9.7.2013 & registered notices were sent to both the parties on 23.9.2013 fixing 17.10.2013 for filing statement of claim. On 17.10.2013 vakalatnama was filed on behalf of opposite party. Applicant, Mandal Mantri, North West Railway Karmachari Sangh, Ajmer Mandal, 370/E, Babu Line, Railway Colony, Topada, Ajmer remained unserved for 17.10.2013 & none came in appearance on behalf of applicant. The registered notice returned back which is on record with endorsement of postal department that on the designated address no one lives who is said to be Mandal Mantri hence, the registered letter is returned back. Order was passed on 17.10.2013 to sent registered notice again as per address given in reference and 19.12.2013 was fixed for filing claim & appearance of parties.

3. On 19.12.2013 none appeared on behalf of applicant & there was appearance of learned counsel on behalf of opposite party. Registered notice as per order dated 17.10.2013 was not sent hence, again it was ordered on 19.12.2013 to send registered notice for 10.3.2014. On 30.1.2014 registered notice was sent to the applicant for the date fixed 10.3.2014. On 10.3.2014 learned counsel for opposite party was present & none appeared on behalf of applicant. Registered notice sent on 30.1.2014 returned back which is on record of the file with endorsement of the postal department that on the designated address no one lives as indicated in the address. This endorsement has been made on 1.2.2014. On 10.3.2014 learned advocates were on strike hence, 14.3.2014 was next date fixed for further order & case was adjourned.

4. On 14.3.2014 none appeared from both the side. Applicant remained unserved with endorsement on registered notices that no one resides as mentioned in the address. Applicant on his own motion also as per direction of the letter of reference dated 7.6.2013 did not attempt to file statement of claim which was to be filed within 15 days from the date of receipt of reference.

5. In above circumstances, there remained no further scope to answer the reference under adjudication in absence of statement of claim & evidence in connection therewith. Accordingly, on 14.3.2014 case was reserved for passing the award.

6. Due to none filing of statement of claim by applicant as per direction of the Ministry of Labour dated 7.6.2013 & due to none appearance of applicant on repeated registered notices of the Tribunal adjudication of reference on merit has become impossible hence, "No Claim Award" is passed in respect of reference under adjudication. The reference in question is answered accordingly.

7. Award as above.

8. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D. Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 26/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-41015/2/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the management of S.E. Railway and their workmen, which was received by the Central Government on 16/04/2014.

[No. L-41015/2/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/26/07

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Prabhakar Mohitkar
S/o Shri Vithoba Mohitkar,
R/o 259/3, R.M, Railway Colony,
Raipur (Chhattisgarh) .....Workman

Versus

General Manager,
S.E.Rly, Garden Reach,
Calcutta (West Bengal)

Chief Engineer (Construction),
S.E.Rly, Raipur (Chhattisgarh)

District Engineer (Construction),
S.E.Rly, Raipur (Chhattisgarh)

Assistant Engineer (Construction) &
Enquiry Officer,
S.E.Rly, Raipur (Chhattisgarh) .....Management

AWARD

Passed on this 12th day of March 2014

1. As per letter dated 10-4-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-41015/2/2007-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of South Eastern Railway (now South East Central Railway (SECR) in removing Shri P.V. Mohitkar, Ex-Junior Clerk, SER, Raipur from service w.e.f. 2-8-76 is justified? If not to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Despite of repeated notices, workman failed to submit his statement of claim. Workman was proceeded ex-parte on 22-4-2010. IInd party submitted ex-parte Written Statement.

3. The case of IInd party management is that workman P.V. Mohitkar was removed from service on 2-8-76 for unauthorized absence. That Mr. R. B. Saxena was appointed as Enquiry Officer. 4 sittings of enquiry were held. After considering report of Enquiry Officer, workman was removed from service. Workman failed to file appeal. Statement of claim is also not filed by him. That workman remained absent without intimation. The Government work was affected because of his unauthorized absence and not handing over keys. That the workman was absconding without reasons therefore he was removed from service.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the action of the management of South Eastern Railway (now South East Central Railway (SECR) in removing Shri P.V. Mohitkar, Ex-Junior Clerk, SER, Raipur from service w.e.f. 2-8-76 is justified?	In Affirmative

(ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

REASONS

5. Workman has not participated in reference proceeding. He failed to submit his statement of claim or evidence. Management filed Written Statement and contents that for unauthorized absence, workman was removed from service, DE was conducted. Affidavit of evidence is filed by witness T. Lakra Dy.Chief Personnel Officer supporting contentions of the IInd party management. That enquiry was conducted about unauthorized absence. After receiving finding of Enquiry Officer, workman was removed from service. The evidence remained unchallenged. I find no reason to disbelieve evidence of management's witness. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the management of South eastern Railway (now South East Central Railway (SECR) in removing Shri P.V.Mohitkar, Ex-Junior Clerk, SER, Raipur from service w.e.f. 2-8-76 is legal.

(2) Workman is not entitled to relief prayed by him.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2014

का.आ. 1407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे मेल सर्विस प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट संदर्भ संख्या 31/2006 को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-41012/125/2005-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th April, 2014

S.O. 1407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award I.D No. 31/2006 of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the management of Railway Mail Service and their workmen, received by the Central Government on 16/04/2014.

[No. L-41012/125/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 31/2006

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. -L-41012/125/2005–IR (B-I) दिनांक 21/2/2006

Sh. Prem Kumar, S/o Sh. Mangturam,
R/o Ward No. 15, Near Surya Cinema,
Ratangarh, Distt. Churu. (Rajasthan)

v/s

1. The Superintendent, Railway Mail Service, ST Division, Jodhpur.

2 Sub Record Officer, Railway Mail Service, ST Division, Bikaner (Rajasthan)

प्रार्थी की तरफ से : श्री सन्तोष कुमार सैनी – एडवोकेट

अप्रार्थी की तरफ से : श्री टी. पी. शर्मा – एडवोकेट

: पंचाट :

दिनांक : 25.02.2014

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उप–धारा 1 खण्ड़ (घ) के अन्तर्गत दिनांक 21.02.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

> "Whether the action of the management of Superintendent, Railway Mail Service, ST Division, Jodhpur and Sub Record Officer, Railway Mail Service, ST Division, Bikaner in terminating the service of claimant Shri Prem Kumar from the post of Class IV employee w.e.f. 30.6.2004 is legal and justified ?If not, what relief the claimant is entitled to and from which date ?"

3. प्रार्थी प्रेमकुमार की तरफ से प्रस्तुत स्टेटमेन्ट ऑफ क्लेम दिनाँकित 7.4.2007 के अनुसार संक्षिप्तः प्रार्थी प्रेमकुमार का कथन है कि रेल डाक सेवा में विपक्षीगण के अधीन दैनिक वेतन श्रमिक के रूप में दिनांक 25.6.87 को वह चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्त हुआ और सेवा से पृथक होने की तिथि 30.6.2004 तक लगातार बिना किसी व्यवधान के नियोजित रहा। उक्त अवधि के दौरान उससे चतुर्थ श्रेणी कर्मचारी का समस्त कार्य कार्यालय की सफाई, पानी भरने तथा डाक के बंडल बांधकर उन्हें डाक बैग में पैक करने तथा बंडलों को ठेले पर रखकर रेल के डिब्बे तक पहुँचाने, डाक बैग को रेल डाक वाहन में छोडने तथा डाक बैग लाने आदि समस्त कार्य बतौर कर्मकार लिया जाता था और उक्त अवधि में प्रार्थी की सेवा पूर्णतया सन्तोषप्रद रही। विपक्षीगण का संस्थान एक औद्योगिक संस्थान है जिसके नियोजन में कैलेण्डर वर्ष में 240 दिन से कही अधिक लगातार कार्यरत रहने से प्रार्थी

एक औद्योगिक कर्मकार हो गया और विपक्षीगण से उसका सम्बन्ध मजदूर एवं मालिक का रहा। विपक्षीगण के अधीन प्रतिदिन 8 घण्टे से अधिक बतौर कर्मकार प्रार्थी ने शारीरिक श्रम और कौशलपूर्ण कार्य करता रहा, ऐसी स्थिति में प्रार्थी की सेवा औद्योगिक विवाद अधिनियम 1947 एवं औद्योगिक विवाद नियम 1957 के आज्ञापक प्रावधानों के प्रतिकूल समाप्त नहीं की जा सकती।

4. विपक्षीगण ने मौखिक आदेश से दिनांक 30.6.2004 को दोपहर बाद बतौर ''छंटनी'' प्रार्थी की सेवा समाप्त कर दी। सेवा समाप्ति के पूर्व प्रार्थी जैसे कार्यरत कर्मकारों की कोई वरीयता सूची नहीं जारी की गई। विपक्षीगण द्वारा बदनियती से प्रार्थी की सेवा अवैध, अनुचित एवं गैर कानूनी रूप से पद रिक्त होते हुए भी इसलिए समाप्त कर दी ताकि प्रार्थी को उसकी सेवा अवधि के अनुरूप नियमित सेवा का लाभ प्राप्त न हो सकें।

5. आगे प्रार्थी का यह कथन है कि सेवा से पृथक करने से पूर्व उसे औद्योगिक विवाद अधिनियम 1974 की धारा 25 (एफ) के अन्तर्गत निर्धारित नोटिस अथवा नोटिस के बदले वेतन एवं छंटनी मुआवजा राशि का भुगतान नहीं किया गया। यह भी कहा गया है कि सेवा से पृथक करने से पूर्व कर्मकारों की कोई सूची केन्द्र सरकार को नहीं भेजी गई और न ही कोई ऐसी सूची कार्यालय के नोटिस बोर्ड पर चस्पा की गई, इस प्रकार औद्योगिक विवाद नियम 1957 के नियम 77 एवं 78 का पालन नहीं किया गया। यह भी कहा गया है कि प्रार्थी के साथ नियुक्त एवं प्रार्थी की नियुक्ति के बाद भी नियुक्त कर्मकारों को विपक्षीगण द्वारा सेवा से पृथक नहीं किया गया और वे आज भी नियोजित रहते हुए नियमित सेवा का लाभ प्राप्त कर चुके है। इस प्रकार विपक्षीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25 (जी) के आज्ञापक प्रावधान तथा प्रथम आएं और आखिर जाएं के सिद्धान्त का पालन नहीं किया गया।

6. याचिका के प्रस्तर 8 में प्रार्थी ने यह उल्लेख किया है कि उसकी सेवा विपक्षीगण के अधीन किसी भी अस्थायी स्कीम अथवा संविदा पर अथवा अंशकालीन कर्मकार अथवा ठेका प्रथा पर नहीं रही। प्रार्थी की सेवा विपक्षीगण द्वारा नियमित एवं स्थायी प्रकृति के कार्य पर ली गई और उस पद के आज भी रिक्त होते हुए इस मन्शा से ''छंटनी'' के तौर पर समाप्त कर दी गई ताकि प्रार्थी अपनी विगत सेवा–अवधि के अनुरूप नियमित सेवा का लाभ प्राप्त न कर सकें। यह भी कहा है कि वह अपने परिवार में एकमात्र कमाने वाला व्यक्ति है जिसका पारिवारिक जीवन संकट से घिर गया है और वह जीवन–यापन के लिए कर्जदार हो गया।

7. प्रस्तर 9 में प्रार्थी ने यह उल्लेख किया है कि उसको सेवा से पृथक करने के बाद विपक्षीगण ने सर्वश्री विनोद रक्षक, रामप्रसाद, रतनलाल, प्रेमकुमार पंवार, दुर्गाराम आदि व्यक्तियों को नियोजित किया जो नियमित सेवा का लाभ प्राप्त कर चुके है और प्रार्थी जो हमेशा नियोजन के लिए तत्पर रहा उसे जानबूझकर विपक्षीगण ने नियोजन से वन्चित रखा और नियोजन के लिए नहीं बुलाया। इस प्रकार उनके द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25 (एच) का उलंघन किया गया।

8. यह भी कहा गया है कि विपक्षीगण समय–समय पर आदेश पारित कर प्रार्थी की सेवा अवधि को बढ़ाते रहे और ब्रेक देने की मन्शा से प्रार्थी को संविदा पर दर्शाए जाने की अवैधानिक कार्यवाही अमल में लायी तथा रतनगढ़ इकाई को बन्द होना दर्शा कर प्रार्थी को बेरोजगार कर दिया जबकि प्रार्थी विपक्षीगण के अधीन किसी भी कार्य–स्थल पर सेवा देने के लिए तैयार था लेकिन अवैधानिक तौर पर उसकी सेवा समाप्त कर दी गई जो विपक्षीगण का प्रार्थी के विरूद्ध पांचवी अनुसूची में निहित ''अनुचित श्रम व्यवहार'' है। आगे यह कथन है कि प्रार्थी ने अवैध रूप से सेवा समाप्त करने पर विपक्षीगण एवं उनके उच्चाधिकारीयों को सेवा में पुनः लेने के लिए निवेदन किया जिस पर विपक्षीगण ने मौखिक आदेश देकर इन्तजार में रखा और रतनगढ़ कार्यालय को चुरू में स्थानान्तरित कर दिया तथा रतनगढ़ के कार्यालय में कार्यरत कर्मकारों को चुरू और बिकानेर के अधीन समायोजित कर दिया लेकिन प्रार्थी को समायोजित न कर बतौर छंटनी उसकी सेवा समाप्त कर दी। अतः प्रार्थी ने यह अनुतोष मांग की है कि सेवा समाप्ति का आदेश निरस्त कर वेतन सहित, सेवा की निरन्तरता का लाभ प्रदान किया जाय और एरियर की धन राशि पर 12 प्रतिशत वार्षिक ब्याज की दर से ब्याज दिलवाया जाय।

9. विपक्षीगण की तरफ से स्टेटमेन्ट ऑफ क्लेम का प्रस्तरवार जवाब दिनांकित 26.5.2010 प्रस्तुत कर प्रस्तर एक के सम्बन्ध में कहा गया है कि इस पर टिप्पणी की आवश्यकता नहीं है। प्रस्तर दो, तीन, चार, पॉच, छः, सात, आठ, नौ, दस और ग्यारह में प्रस्तुत किये गये कथन को अस्वीकार किया गया है और आगे यह कहा गया है कि याची रेल डाक सेवा, उप अभिलेख कार्यालय, रतनगढ़ में पानी भरने के लिये अंशकालीन तौर पर रखा गया था एवं आवश्यकता होने पर कार्यालय में सफाई, डाक के बंडल बॉधकर उन्हें डाक थैलों में पैक करने के कार्य के लिए रखा गया था। रेल डाक सेवा, उप अभिलेख कार्यालय, रतनगढ़ को डाक विभाग द्वारा दिनांक 1.7.2004 को बन्द कर दिया गया इसलिए याची को 1.7.2004 के बाद कार्य के लिए नहीं बुलाया गया। आगे विशेष रूप से इस बात का उल्लेख किया गया है कि प्रार्थी श्रमिक को कभी नियुक्त नहीं किया गया, इसलिए उसके द्वारा 240 दिन तक कार्य करने का प्रश्न उत्पन्न नहीं होता।

10. यह भी कहा गया है कि पानी भरने के लिये याची को कभी–भी स्थायी रूप से नहीं रखा गया था और जब आवश्यकता होती थी तब अंशकालीन तौर पर उसे पानी भरने के लिए बुलाया जाता था और कभी किसी भी रूप में किसी पद पर उसकी नियुक्ति नहीं की गयी।

11. आगे यह उल्लेख है कि याची की किसी पद पर नियुक्ति नहीं की गयी इसलिए बतौर ''छटनी'' उसे हटाने का कोई प्रश्न नहीं उठता। उसे अंशकालीन तौर पर केवल पानी भरने के लिए जब आवश्यकता होती थी तब उसे बुलाया जाता था और उसे कभी स्थायी रूप से नहीं रखा गया था। याची को कोई नियुक्ति आदेश अथवा नियुक्ति पत्र प्रदान नहीं किया गया था इसलिए उसे हटाने

के लिए नोटिस अथवा नोटिस के बदले वेतन एवं छटनी मुआवजा का भुगतान नहीं किया गया।

12. स्टेटमेन्ट ऑफ क्लेम में प्रस्तर 9 में जिन व्यक्तियों को याची ने दर्शा कर यह उल्लेख किया है कि उन्हें याची को सेवा से पृथक करने के बाद नियोजित किया गया और वे नियमित सेवा का लाभ भी प्राप्त कर चुके है इस सम्बन्ध में विपक्षीगण ने वादोत्तर के प्रस्तर 9 में यह उल्लेख किया है कि वे लोग विभाग में पहले से ही निर्धारित विभागीय नियुक्ति प्रक्रिया के अनुसार सेवारत है और नियमित सेवा का लाभ प्राप्त कर रहे है।

13. ''अनुचित श्रम व्यवहार'' के सम्बन्ध में स्टेटमेन्ट ऑफ क्लेम में प्रस्तुत कथन के विरूद्ध विपक्षीगण का यह जवाब है कि याची को कभी नियुक्ति नहीं किया गया इसलिए उसे सेवा से पृथक करने का प्रश्न ही नहीं उठता अतः याची द्वारा ''अनुचित श्रम व्यवहार'' के कथन से विपक्षीगण को कोई लेना–देना नहीं है।

14. वादोत्तर के प्रस्तर 11 में यह स्वीकार किया है कि अस्थायी रूप से कार्यरत रेल डाक सेवा कार्यालय के कर्मचारियों को चुरू और बिकानेर के कार्यालय में स्थानान्तरित किया गया और याची केवल अंशकालीन कार्य के लिए रखा गया था जिसके द्वारा याचित अनुतोष तथा स्टेटमेन्ट ऑफ क्लेम में वर्णित तथ्य गलत, मनगढ़न्त और विधि विरूद्ध होने के कारण स्वीकार किये जाने योग्य नहीं है और याची किसी प्रकार का अनुतोष पाने का अधिकारी नहीं है, अतः स्टेटमेन्ट ऑफ क्लेम निरस्त किया जाय।

15. प्रार्थी श्रमिक की तरफ से याचिका के समर्थन में प्रलेखीय साक्ष्य के रूप में दस्तावेजों की सूची दिनांकित 28.4.2011 के साथ 9 अदद अभिलेख प्रस्तुत किये गये है जिन पर प्रदर्श डब्ल्यू 1 लगायत प्रदर्श डब्ल्यू 12 डाला गया है। प्रदर्श डब्ल्यू 2 निर्दिष्ट विवाद (Refrence) पर डाला गया है। याची द्वारा दस्तावेजों की सूची दिनांकित 29.3.2012 के साथ सूचना के अधिकार अधिनियम के अर्न्तगत प्रस्तुत प्रार्थना–पत्र की प्रति तथा पंजीकृत डाक से भेजी गई, पंजीयन रसीद क्रमशः प्रदर्श डब्ल्यू 10 एवं प्रदर्श डब्ल्यू 11 प्रस्तुत है। प्रार्थी श्रमिक की तरफ से अन्य कोई अभिलेख नहीं प्रस्तुत है। मौखिक साक्ष्य के रूप में प्रार्थी श्रमिक प्रेमकुमार की नोटरी द्वारा प्रमाणित शपथ–पत्र दिनांक 29.3.2012 साक्ष्य में प्रस्तुत की गई है जिसके विरूद्ध विपक्ष द्वारा प्रार्थी श्रमिक की दिनांक 26.6.2012 को प्रतिपरिक्षा की गई है। इसके अतिरिक्त प्रार्थी श्रमिक की तरफ से साक्ष्य में मनोहर लाल पुत्र श्री गणपत लाल का शपथ–पत्र प्रस्तुत है। शपथ–पत्र दिनांक 5.9.2012 को प्रस्तुत है लेकिन श्री मनोहल लाल विपक्ष द्वारा प्रतिपरीक्षा के लिये उपस्थित नहीं हुए है।

16. विपक्षीगण की तरफ से कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया गया है और मौखिक साक्ष्य के रूप में श्री कपूरचन्द वर्मा पुत्र श्री वीर सिंह, निरीक्षक, रेल डाक सेवा एस.टी. डिवीजन बिकानेर, जौधपुर का शपथ–पत्र प्रस्तुत किया गया है। याची पक्ष द्वारा श्री कपूरचन्द वर्मा की प्रतिपरीक्षा नहीं की गयी है।

17. मैने विपक्षीगण की तरफ से उनके विद्वान अधिवक्ता की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया। प्रार्थी श्रमिक की तरफ से बहस के लिये कोई उपस्थित नहीं हुआ। विपक्षीगण की तरफ से लिखित बहस भी प्रस्तुत की गयी है।

18. निर्णयार्थ पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रस्तुत अभिलेखीय या मौखिक साक्ष्य की समीक्षा के पूर्व उन परिस्थितियों का इस स्तर पर उल्लेख करना मैं आवश्यक समझता हूँ जिन परिस्थितियों में पत्रावली निर्णय हेतु दिनांक 5.2.2014 को आरक्षित की गयी। दिनांक 26.6.2012 को विपक्ष द्वारा प्रार्थी श्रमिक प्रेमकुमार की प्रतिपरीक्षा पूरी हुई और प्रार्थी श्रमिक ने अतिरिक्त साक्ष्य प्रस्तुत करने का कथन किया जिसके परिणामस्वरूप तत्कालीन विद्वान पीठासीन न्यायाधीश ने दिनांक 5.9.2012 को प्रार्थी श्रमिक के शेष साक्ष्य के लिये तिथि निर्धारित की। दिनांक 5.9.2012 को प्रार्थी श्रमिक स्वयं उपस्थित था तथा उसके विद्वान प्रतिनिधि भी उपस्थित थे। विपक्ष की ओर से कोई उपस्थित नहीं था। प्रार्थी श्रमिक पक्ष की तरफ से साक्षी श्री मनोहर लाल का शपथ–पत्र प्रस्तुत किया गया लेकिन मनोहर लाल स्वंय उपस्थित नहीं थे अतः दिनांक 29.11.2012 को मनोहर लाल की प्रतिपरीक्षा हेतु तिथि निर्धारित की गयी। दिनांक 29.11.2012 को प्रार्थी श्रमिक की तरफ से कोई उपस्थित नहीं था और साक्षी श्री मनोहर लाल भी उपस्थित नहीं थे। विपक्षीगण की तरफ से उनके विद्वान प्रतिनिधि उपस्थित थे जिन्हें श्री मनोहर लाल के शपथ–पत्र की प्रतिलिपि दी गई और साक्ष्य के लिये 24.1.2013 तिथि नियत की गई। दिनांक 24.1.2013 को श्रमिक पक्ष अनुपस्थित था और विपक्ष उपस्थित था। अतः श्रमिक पक्ष के विरूद्ध मेरे विद्वान पूर्वाधिकारी द्वारा एकपक्षीय कार्यवाही किए जाने का आदेश पारित किया गया तथा दिनांक 7.3.2013 विपक्षी की साक्ष्य हेतु नियत की गयी। दिनांक 7.3.2013 को विद्वान अधिवक्तागण न्यायायिक कार्य से विरत रहे और उभयपक्ष अनुपस्थित थे। अतः दिनांक 9.5.2013 को विपक्षी साक्ष्य के लिये तिथि नियत की गयी। दिनांक 9.5.2013 को श्रमिक पक्ष अनुपस्थित था और विपक्ष उपस्थित था। विपक्ष ने अपना साक्ष्य प्रस्तुत करने के लिये अवसर चाहा जो स्वीकार किया गया और साक्ष्य के लिए अगली तिथि 23.7.2013 को नियत की गयी। दिनांक 23.7.2013 को श्रमिक पक्ष अनुपस्थित और विपक्ष उपस्थित था, लेकिन न्यायालय रिक्त था। अतः साक्ष्य हेतु दिनांक 23.9.2013 को तिथि नियत की गयी और 23.9.2013 को भी न्यायालय रिक्त रहने के कारण 9.12.2013 तिथि नियत की गयी। नये पीठासीन न्यायाधीश ने दिनांक 10.10.2013 को कार्यभार ग्रहण किया।

19. दिनांक 9.12.2013 को प्रार्थी पक्ष अनुपस्थित रहा और विपक्ष उपस्थित था। विपक्ष ने साक्ष्य के रूप में श्री कपूरचन्द वर्मा, निरीक्षक का शपथ–पत्र प्रस्तुत किया। शेष साक्ष्य हेतु दिनांक 5.2.2014 तिथि नियत की गयी। दिनांक 5.2.2014 को भी याची पक्ष अनुपस्थित था। विपक्ष के विद्वान अधिवक्ता उपस्थित हुए और लिखित बहस प्रस्तुत की। उक्त स्थिति में विपक्ष का साक्ष्य समाप्त किया गया एवं विपक्ष की एकपक्षीय बहस सुनी गयी तथा पत्रावली निर्णयार्थ आरक्षित की गयी एवं तद्नुसार निर्णय आदेश पारित

किया जा रहा है। उल्लेखनिय है कि आदेश तालीका की उक्त स्थिति से यह जाहिर है कि प्रार्थी श्रमिक की प्रतिपरिक्षा अंकित होने के बाद वह केवल अगली तारीख दिनांक 5.9.2012 को श्री मनोहर लाल साक्षी की शपथ–पत्र के साथ उपस्थित हुआ है। दिनांक 5.9.2012 के बाद अब तक किसी भी तिथि को प्रार्थी श्रमिक उपस्थित न ही आया है और न ही साक्षी श्री मनोहरलाल साक्ष्य के लिये उपस्थित हुए हैं। जहॉ तक स्टेटमेन्ट ऑफ क्लेम में याची पक्ष द्वारा प्रस्तुत किये गये कथन के सिद्ध पाए जाने का प्रश्न है इस सम्बन्ध में उल्लेखनीय है कि विपक्ष के साक्ष्य से प्रार्थी श्रमिक को किसी प्रकार की मदद नहीं मिल सकती है क्योंकि विपक्षी साक्षी श्री कपूरचन्द वर्मा, निरीक्षक की श्रमिक पक्ष द्वारा कोई प्रतिपरिक्षा नहीं की गयी है। विपक्ष की तरफ से कोई प्रलेखीय साक्ष्य भी नहीं प्रस्तुत किया गया है। अतः प्रलेख के आधार पर भी विपक्ष से श्रमिक पक्ष को कोई मदद नहीं दी जा सकती। यह भी उल्लेखनीय है कि विपक्षी साक्षी की प्रतिपरीक्षा नहीं की गयी है अतः विपक्ष के शपथ–पत्र पर अविश्वास करने अथवा उसको बतौर साक्ष्य न ग्रहण करने का कोई विधिक आधार नहीं है।

20. विपक्षीगण के विद्वान अधिवक्ता द्वारा अपने मौखिक बहस में लिखित बहस के तथ्यों की पुनरावृत्ति करते हुए यह कहा गया है कि प्रार्थी श्रमिक किसी प्रकार का अनुतोष एवं परिलाभ प्राप्त करने का अधिकारी नहीं है, स्टेटमेन्ट ऑफ क्लेम मनगढ़न्त तथ्यों पर आधारित है, अतः उसे निरस्त किया जाय। लिखित बहस में मुख्यतः यह कथन है कि श्रमिक को रतनगढ़ में अंशकालीन कर्मचारी के तौर पर पानी भरने के लिये रखा गया था और आवश्यकता होने पर कार्यालय में पानी भरने के साथ सफाई, डाक के बंडल बांधकर उन्हें डाक थेलों में पैक करने के लिये अंशकालीन तौर पर रखा गया था, चूंकि रेल डाक सेवा, उप–अभीलेख कार्यालय, रतनगढ़ को रेल डाक विभाग द्वारा दिनांक 1.7.2004 को बन्द कर दिया गया इसलिए श्रमिक को दिनांक 1.7.2004 के बाद कार्य के लिए नहीं बुलाया गया क्योंकि कार्यालय बन्द हो जाने के कारण कोई कार्य नहीं रह गया। लिखित बहस में यह भी कहा गया है कि केवल आवश्यकता होने पर पानी भरने के लिए उसे बुलाया जाता था और स्थायी तौर पर नहीं रखा गया था इसलिये श्रमिक ने किसी भी वर्ष में 240 दिन तक कार्य नहीं किया और उसे किसी पद पर नियुक्ति नहीं की गयी थी। लिखित बहस में शेष उन्हीं बातों की पुनरावृत्ति की गयी है जिनका उल्लेख वादोत्तर में किया गया है।

21. जहॉ तक श्रमिक पक्ष की तरफ से साक्ष्य का प्रश्न है श्रमिक ने कोई नियुक्ति पत्र अथवा सेवा समाप्ति से सम्बन्धित पत्र नहीं प्रस्तुत किया है। प्रलेखीय साक्ष्य में प्रस्तुत प्रदर्श डब्ल्यू 3 लगायत प्रदर्श डब्ल्यू 7 का उल्लेख निम्नवत् है : –

Ex. W-3

''यह प्रमाणित किया जाता है कि श्री प्रेम कुमार शर्मा S/o श्री मंगतूराम को रेल डाक सेवा रतनगढ़ मैं UAC पद पर अस्थायी तौर पर नियुक्त दिनांक 25–6–87 से किया जाता है।

डाक अदान–प्रदान करने हेतु रेल्वे प्लेट फार्म पर आ जा सकता है।''

हस्ताक्षर अपठनीय

25.6

(उप अभिलेख अधिकारी
रेल डाक सेवा 'एस टी' मण्डल
रतनगढ़ – 331 022)

स्टैम्प

Ex. W-4

''यह प्रमाणित किया जाता है कि प्रेम कुमार शर्मा S/o मंगतु राम शर्मा इस कार्यालय में पानी वाला के पद पर अस्थाई तोर पर 1.4.95 से कार्य कर रहा है।''

हस्ताक्षर अपठनीय

26.12.97

(S.D. Bhardwaj)
Sub-Record Officer
R.M.S. "ST" Dn.
RATANGARH-331 022)

स्टैम्प

Ex. W-5

प्रमाण पत्र

''प्रमाणित किया जाता है कि श्री प्रेम कुमार पुत्र श्री मंगतु राम इस कार्यालय में Contigent Paid पानी वाला में कार्यरत है। व समय–समय पर ED UAC में भी कार्य करता रहता है।''

हस्ताक्षर अपठनीय

15.1.99

(S.D. Bhardwaj)
Sub-Record Officer
R.M.S. "ST" Dn.
RATANGARH-331 022)

स्टैम्प

Ex. W-6

''यह प्रमाणित किया जाता है कि प्रेम कुमार शर्मा S/o श्री मगंतु राम शर्मा इस कार्यालय में कन्टीजेण्ट पानी वाला के रूप में कार्य करता है व समय–समय पर ED UAC के पद पर भी कार्य करता है।''

हस्ताक्षर अपठनीय

14.7.99

(S.D. Bhardwaj)
Sub-Record Officer
R.M.S. "ST" Dn.
RATANGARH-331 022)

स्टैम्प

Ex. W-7

''यह प्रमाणित किया जाता है कि श्री प्रेम कुमार S/o श्री मंगतू राम शर्मा ने इस कार्यालय रिकॉर्ड अनुसार समय 2 पर ED UAC में इस कार्यालय के छंटाई कार्यालय में कार्य किया है।''

हस्ताक्षर अपठनीय
(हेमराज)
(उप अभिलेख अधिकारी
रेल डाक सेवा 'एस टी' मण्डल
रतनगढ़ – 331 022)

स्टैम्प

22. उक्त प्रदर्श डब्ल्यू 3 लगायत प्रदर्श डब्ल्यू 7 के सम्यक् एवं सूक्ष्म अवलोकन से यह जाहिर है कि प्रदर्श डब्ल्यू 7 तिथि विहिन है जिसमें यह उल्लेख है कि समय–समय पर प्रेमकुमार ने छंटाई का कार्य किया है। अभिलेख प्रदर्श डब्ल्यू 3 दिनांकित 25.6.87, डब्ल्यू 4 दिनांकित 26.12.97, डब्ल्यू 5 दिनांकित 15.1.99 और डब्ल्यू 6 दिनांक 14.7.1999 है। प्रदर्श डब्ल्यू 3 में प्रेमकुमार ने यह दर्शाने का प्रयास किया है कि वह 25.6.87 से रतनगढ़ में यू.ए.सी. के पद पर अस्थायी तौर पर दिनांक 25.6.87 को नियुक्त हुआ है। इसके ठीक लगभग 10 साल बाद का अभिलेख डब्ल्यू 4 दिनांक 26.12.87 का है जिसमें यह उल्लेख है कि प्रेमकुमार पानी वाला के पद पर अस्थायी तौर पर 1.4.95 को नियुक्त है। प्रदर्श डब्ल्यू 5 में जो प्रदर्श डब्ल्यू 4 के लगभग एक साल बाद का अभिलेख है उसमें यह उल्लेख है कि प्रेमकुमार कन्टीजेन्ट भुगतान पर पानी वाला के रूप में कार्यरत है और समय–समय पर यू.ए.सी. में भी कार्य करता रहता है। दिनांक 14.7.1999 को निर्गत प्रदर्श डब्ल्यू 6 में भी उसी बात का उल्लेख है, जो प्रदर्श डब्ल्यू 5 में अंकित है। इन सभी प्रदर्श डब्ल्यू 3 लगायत प्रदर्श डब्ल्यू 7 से यह जाहिर होता है कि प्रेमकुमार पानी भरने के लिए नियुक्त था लेकिन इन सभी अभिलेखों से समय की सीमा निर्धारित नहीं होती और न ही सेवा की अविच्छिन्नता का बौध होता है। जहां तक अभिलेख प्रदर्श डब्ल्यू 3 लगायत प्रदर्श डब्ल्यू 7 को सिद्ध किये जाने का प्रश्न है इस अभिलेखों को निर्गत करने वाले किसी भी साक्षी को प्रस्तुत नहीं किया गया है और न्यायालय के समक्ष प्रेमकुमार के अतिरिक्त कोई अन्य साक्षी मौखिक साक्ष्य में नहीं प्रस्तुत किया गया है। इन अभिलेखों का उल्लेख याची ने साक्ष्य में प्रस्तुत शपथ–पत्र के प्रस्तर 9 में किया है और यह कहा है कि डब्ल्यू 3 लगायत डब्ल्यू 8 समय–समय पर विपक्षी द्वारा उसके लिये जारी डयूटी आदेश है। जहॉ तक डब्ल्यू 8 का प्रश्न है यह अभिलेख यह प्रदर्शित करता है कि सब रिकॉर्ड ऑफिसर आर.एम.एस. रतनगढ़ ने निरीक्षक महोदय, उप-खण्ड़ – बिकानेर, को दिनांक 28.8.95 को पत्र लिखकर प्रेमकुमार और धर्मचन्द का नाम निरीक्षक महोदय के निर्देश पर पानी भरने का कार्य करने के लिए अनुमोदन हेतु भेजा है और पत्र में यह दर्शाया है कि रतनगढ़ में रिक्त हुए वाटर मैन के पद पर व्यवस्था करने हेतु निर्देश देने की कृपा की जाय और पत्र लिखने की तिथि 28.7.95 को इस कार्य पर प्रेमकुमार अस्थायी रूप से पानी भर रहा है। इस पत्र से भी केवल यही निष्कर्ष निकलता है की प्रेमकुमार रतनगढ़ में प्रारम्भिक रूप से वाटर–मैन के रूप में अस्थायी तौर पर लगाया गया था।

23. जहॉ तक प्रार्थी द्वारा सेवा से हटाये जाने की तिथि 30.6.04 से ठीक पूर्व 240 दिन तक लगातार काम किये जाने के साक्ष्य का प्रश्न है विपक्षी ने इस तथ्य से इन्कार किया है और इस बात का खण्डन शपथ–पत्र में किया है अतः इस तथ्य को सिद्ध करने का भार प्रार्थी पक्ष पर है। याची द्वारा प्रस्तुत अभिलेख से लगातार 240 दिन कार्य करने के तथ्य की पुष्टि नहीं होती है। इस सम्बन्ध में वेतन प्राप्त करने सम्बन्धित कोई अभिलेख प्रार्थी ने नहीं प्रस्तुत किया है। किसी सह कर्मी को भी साक्ष्य में नहीं प्रस्तुत किया है। ऐसा कोई प्रलेख पत्रावली पर नहीं है जिससे 240 दिन लगातार कार्य करने की अवधारणा ही ग्रहण की जा सकें।

24. प्रार्थी की दिनांक 30.9.2010 की आवेदन में विपक्ष सें कुछ अभिलेख की मॉग की गयी है जिसमें से तत्कालीन विद्वान पीठासीन न्यायाधीश ने केवल उपस्थिति पंजिका एवं वेतन भुगतान पंजिका प्रस्तुत करने के लिए दिनांक 28.4.11 को आदेश किया है और कहा है कि अभिलेख प्रस्तुत न करने की स्थिति में शपथ–पत्र सम्बन्धित अधिकारी को प्रस्तुत किया जाय। विपक्ष की तरफ से इस सम्बन्ध में शपथ–पत्र दिनांकित 15.9.11 प्रस्तुत है जिसमें कहा गया है कि क्लेम प्रार्थना–पत्र काल्पनिक है एवं विपक्ष के पास रिकॉर्ड उपलब्ध नहीं है एवं क्लेम ऐसे दस्तावेजों पर आधारित है जो विपक्ष के पास कभी नहीं रहे एवं उन्हें प्रस्तुत करना सम्भव नहीं है। इस प्रकार 240 दिन के वेतन भुगतान एवं उपस्थिति के तथ्य को प्रार्थी साबित नहीं कर सका है। प्रतिपरीक्षा में प्रार्थी ने पृष्ठ एक पर स्वीकार किया है कि उसे कोई नियुक्ति पत्र नहीं मिला था जबकि याचिका में प्रस्तर दो में यह कहा है कि उसे चतुर्थ श्रेणी कर्मचारी के पद पर दिनांक 25.6.87 को नियुक्त किया गया था। चपरासी का पद ऐसा पद है जहॉ कोई नियुक्ति बिना नियुक्ति –पत्र के नहीं की जा सकती है। प्रार्थी द्वारा प्रस्तुत किसी भी अभिलेख से उसकी 240 दिन तक सेवा की निरन्तरता का साक्ष्य नहीं बनता है जिसके सम्बन्ध में प्रतिपरीक्षा में प्रार्थी ने कहा है कि 240 दिन काम करने के सम्बन्ध में उसने दस्तावेजी साक्ष्य प्रस्तुत किया है। आगे प्रतिपरीक्षा में यह कहा है कि उसे दैनिक मजदूरी पर लगाया गया था जो अस्थायी नहीं था और इस सुझाव से इन्कार किया है कि उसने किसी अवधि में 240 दिन तक लगातार कार्य नहीं किया है। उल्लेखनीय है कि दैनिक मजदूरी पर स्थाई पद पर नियुक्ति का प्रश्न नहीं उठता है। प्रार्थी ने प्रतिपरीक्षा में यह भी स्वीकार किया है कि उसे सेवा से हटाने का आदेश पत्र भी नहीं दिया गया था एवं इस सुझाव से इन्कार किया है कि समय–समय पर आवश्यकतानुसार उसे अस्थायी तौर पर पानी पिलाने हेतु लगाया गया था एवं यह कहा है कि वह डाक आदि का कार्य भी करता था। प्रलेखीय एवं मौखिक साक्ष्य की उक्त व्याख्या एवं विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी इस तथ्य

को सिद्ध करने में असफल है कि उसने 240 दिन तक अविच्छिन्न सेवा समाप्ति की तिथि दिनांक 30.6.04 के ठीक पूर्व किया है।

25. धारा 25 (एफ) में दी गयी व्यवस्था के अनुसार किसी नियोक्ता के अधीन जिस कर्मचारी ने धारा 25 (2) (a) (i) के अनुरूप एक वर्ष अवधि की अविच्छिन्न सेवा कर ली है उसकी छटनी 25 (एफ) में दी गयी प्रक्रिया का पालन किये बिना नहीं की जा सकती है। इस सम्बन्ध में 2006, सुप्रीम कोर्ट (एल.एण्डएस.), 38 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी विधि व्यवस्था उल्लेखनीय है।,

26. 2006 सुप्रीम कोर्ट (एल.एण्ड एस.), 38, सुरेन्द्र नगर जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमर सिंह – प्रत्यर्थी में प्रकरण के तथ्यानुसार प्रत्यर्थी की सेवा 15.8.85 के आदेश से समाप्त कर दी गयी थी। सेवा समाप्ति के लगभग सात साल बाद दिनांक 01.6.92 को प्रत्यर्थी ने अपीलार्थी को सेवा में पुनर्स्थापना की नोटिस भेजी और अन्ततः प्रत्यर्थी की सेवा समाप्ति का विवाद न्यायनिर्णयन हेतु औद्योगिक न्यायाधिकरण को सुपुर्द किया गया।

27. प्रत्यर्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह उल्लेख किया कि वह सेवा समाप्ति के आदेश दिनांक 15.8.85 तक 10/– रूपये दैनिक मजदूरी पर अपीलार्थी की सेवा में था एवं सेवा समाप्ति के आदेश निर्गत होने के पूर्व औद्योगिक विवाद अधिनियम के प्राविधानों का पालन नहीं किया गया। श्रम न्यायालय के समक्ष प्रत्यर्थी की तरफ से एक आवेदन अपीलार्थी को निर्देश जारी करने के लिए प्रस्तुत हुई कि अपीलार्थी 1976 से 1986 तक की सेवा अवधि का वेतन रजिस्टर एवं मस्टर रोल प्रस्तुत करें। अपीलार्थी ने स्टेटमेन्ट ऑफ क्लेम के विरूद्ध यह कथन प्रस्तुत किया कि प्रत्यर्थी स्वंय काम पर आना बन्द कर कर दिया एवं उसे कोई स्थायी नियुक्ति नहीं दी गयी थी। वह मुतफर्का कार्यों के लिए नियुक्त था तथा जब काम होता था तो उसे बुला लिया जाता था। यह भी कहा गया कि कर्मचारी ने सेवासमाप्ति के ठीक पूर्व पूर्ववर्ती 12 माहों में 240 दिन तक लगातार कार्य नहीं किया है। यह भी कहा गया कि उसने सन् 82, 83 और 84 में क्रमशः 114, 63 और 124 दिन कार्य किया है अतः उसकी सेवाऐं समाप्त करने के पूर्व धारा 25 (एफ) औद्योगिक विवाद अधिनियम में दी गयी प्रक्रिया का अनुपालन करने की विधिक आवश्यकता नहीं थी।

28. प्रत्यर्थी ने स्वंय को साक्ष्य में प्रस्तुत कर सशपथ कहा कि वह दस साल तक 470/– रूपये प्रतिमाह के वेतन पर नियुक्त था। अपीलार्थी की तरफ से एक कर्मचारी ने साक्ष्य में उपस्थित होकर कहा कि कर्मचारी ने कभी भी एक वर्ष में 240 दिन काम नहीं किया। श्रम न्यायालय ने प्रत्यर्थी के साक्ष्य पर भरोसा किया और मस्टर रोल तथा 1976 से 86 तक की वेतन रजिस्टर न प्रस्तुत करने पर प्रतिकूल अवधारणा ग्रहण कर यह अवधारित किया कि प्रत्यर्थी ने 240 दिन से ज्यादे कार्य किया अतः उसकी सेवामुक्ति अवैधानिक थी। श्रम न्यायालय ने धारा 25 (एफ), 25 (जी) एवं 25 (एच) की प्रक्रिया का पालन न करने के कारण कर्मचारी को पुनर्स्थापना के लिए आदेशित किया एवं साथ ही पिछले वेतन की 20 प्रतिशत धनराशि अदा करने का निर्देश दिया।

29. माननीय उच्च न्यायालय की एकल पीठ ने श्रम न्यायालय के निर्णय की पुष्टि की तथा श्रम न्यायालय के निर्णय के विरूद्ध अपीलार्थी की याचिका खारिज की। एकल पीठ के निर्णय के विरूद्ध माननीय उच्च न्यायालय की खण्डपीठ ने लेटर्स पेटेंट अपील निरस्त की एवं यह अवधारित किया कि श्रम न्यायालय ने सही अवधारित किया है कि कर्मचारी ने मौखिक साक्ष्य से अपने कथन साबित किया है। माननीय खण्डपीठ ने श्रम न्यायालय द्वारा वेतन पंजिका, मस्टर रोल, तथा कर्मचारियों की वरिष्ठता सूची न प्रस्तुत करने पर ग्रहण की गयी प्रतिकूल अवधारणा को भी सही ठहराया। श्रम न्यायालय ने यह भी अवधारित किया कि प्रत्यर्थी की तुलना में एवं कनिष्क कर्मचारी की सेवा नियमित रूप से जारी रखी गयी और प्रत्यर्थी की सेवा समाप्त कर दी गयी।

30. माननीय सर्वोच्च न्यायालय के समक्ष माननीय उच्च न्यायालय की खण्डपीठ के निर्णय के विरूद्ध अपीलार्थी की यह बहस थी कि माननीय सर्वोच्च न्यायालय ने अपने अनेक निर्णयों में अत्यन्त स्पष्ट रूप से यह अवधारित किया है कि प्रारम्भिक तौर पर सिद्ध करने का दायित्व कर्मचारी पर है कि सेवा समाप्ति की तिथि के पूर्व एक वर्ष में कर्मचारी ने 240 दिन कार्य किया है जो दायित्व निर्वाह करने में कर्मचारी असफल रहा है। यह बहस भी की गयी कि 10 साल का अभिलेख प्रस्तुत न करने पर प्रतिकूल अवधारणा ग्रहण करने की कोई वजह नहीं थी। प्रत्यर्थी की तरफ से यह बहस की गयी श्रम न्यायालय ने प्रतिकूल अवधारणा अभिलेखों के सम्बन्ध में ग्रहण करके श्रम न्यायालय ने सही किया है क्योंकि नियोजक के कब्जे में अभिलेख थे अतः श्रम न्यायालय द्वारा मॉग किये जाने पर उसे प्रस्तुत करना नियोक्ता का कर्तव्य था। यह बहस भी की गयी कि अभिलेख नियोक्ता के कब्जे में है इसलिए उसका दायित्व है कि वह सिद्ध करे कि सम्बन्धित अवधि में कर्मचारी ने 240 दिन कार्य नहीं किया है।

31. उभयपक्ष की उक्त बहस के परिपेक्ष्य में माननीय सर्वोच्च न्यायालय ने धारा 2 (ओओ), धारा 25 (बी) एवं 25 (एफ) की स्पष्ट एवं बोधगम्य व्याख्या करते हुए प्रस्तर 8 पृष्ठ 43 में कर्मचारी द्वारा तथ्यों को सिद्ध करने के दायित्व के सम्बन्ध में तथा छटनी की वैधानिकता के सम्बन्ध में यह अवधारित किया है, "To attract provisions of Section 25-F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry within the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25- B under the employer. These conditions are cumulative. If any of these conditions is missing the provisions of Section 25 –F will not be attracted. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F of the Act.

32. The section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely:-

(i) one month's clear notice in writing indicating the reasons for retrenchment or that the workman has been paid wages for the period of notice in lieu of such notice;

(ii) payment of retrenchment compensation which shall be equivalent to 15 day's average pay for every completed year of continuous service or any part thereof, in excess of six months;

(iii) a notice to the appropriate Government in the prescribed manner."

33. माननीय सर्वोच्च न्यायालय ने प्रस्तर 10 में (1980) 4 एस. सी.सी पृष्ठ 443, सुरेन्द्र कुमार वर्मा बनाम सेन्ट्रल गर्वमेंन्ट इण्डस्ट्रीयल ट्रिब्यूनल कम लेबर कोर्ट में अपने पूर्णपीठ के फैसले सहित अनेक फैसलों का उल्लेख एवं उनकी व्याख्या करते हुए यह अवधारित किया है कि यह सिद्धान्त है कि सिद्ध करने का दायित्व कर्मचारी पर है कि वह दर्शाये कि कथित छटनी की तिथि के ठीक पूर्व एक वर्ष में उसने 240 दिन कार्य किया है और यह दायित्व भी उसी पर है कि वह स्वंय के साक्ष्य में परिक्षित कराने के अतिरिक्त साक्ष्य प्रस्ततुत करें।

34. निर्णय के प्रश्तर 18 में माननीय सर्वोच्च न्यायालय ने उल्लेख किया है कि प्रत्यर्थी की तरफ से मौखिक साक्ष्य के अतिरिक्त कोई साक्ष्य 240 दिन कार्य करने के सम्बन्ध में नहीं प्रस्तुत किया गया है, न वेतन या मजदूरी के सम्बन्ध में कोई रसीद, या अभिलेख या आदेश प्रस्तुत है, न कोई सहकर्मचारी परिक्षित कराया गया, न ही नियोक्ता द्वारा प्रस्तुत मस्टर–रोल पर कोई खण्ड़न प्रस्तुत किया गया।

35. माननीय सर्वोच्च न्यायालय ने यह भी उल्लेख किया है कि यह असम्भव है कि कर्मचारी जो इतनी लम्बी सेवा करने का दावा करता है उसके पास नियोक्ता के अधीन सेवा में लगे रहने तथा कार्य की प्रकृति के सम्बन्ध में कोई अभिलेखीय साक्ष्य नहीं होगा। माननीय सर्वोच्च न्यायालय ने अवधारित किया कि कर्मचारी ने 240 दिन तक कार्य में संलग्न रहने के तथ्य को सिद्ध करने के दायित्व का निर्वाह नहीं किया है एवं विद्वान अधीनस्थ न्यायालयों ने नियोक्ता द्वारा 10 वर्ष का अभिलेख न प्रस्तुत करने के सम्बन्ध में प्रतिकूल अवधारणा गलत ग्रहण की है। माननीय सर्वोच्च न्यायालय ने यह अवधारित किया कि प्रत्यर्थी की सेवा समाप्ति के पूर्व प्रत्यर्थी को धारा 25 (एफ) की सुरक्षा अथवा अनुपालन का अधिकार नहीं था।

36. धारा 25 (जी) एवं 25 (एच) के अनुपालन के सम्बन्ध में यह साक्ष्य था कि दैनिक वेतन भोगी की सूची का रखरखाव अपीलार्थी द्वारा नहीं किया जाता। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि कर्मचारी नियमित सेवा के अभाव में अपीलार्थी से दैनिक वेतन भोगियों की वरिष्ठता सूची के रख रखाव की उम्मीद नहीं की जा सकती है। अभिलेखों की मांग पर अपीलार्थी द्वारा न प्रस्तुत किये जाने पर धारा 114 (III) (जी) भारतीय साक्ष्य अधिनियम के अन्तर्गत न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण किये जाने के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि ऐसी अवधारणा ग्रहण करने से पूर्व न्यायालय के समक्ष कर्मचारी द्वारा इस बात का साक्ष्य प्रस्तुत करना होगा कि कोई वरिष्ठता सूची अस्तित्व में है अन्यथा प्रतिकूल अवधारणा ग्रहण करने की अनुतोष नहीं प्रदान की जा सकती। न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण करने हेतु अधिकार प्रदत्त होने के लिए न्यायालय को सन्तुष्ट होना अनिवार्य है कि साक्ष्य अस्तित्व में है और उसे सिद्ध किया जा सकता था। माननीय सर्वोच्च न्यायालय ने तदनुसार अपील स्वीकार की।

37. जहाँ तक धारा 25 (जी) एवं 25 (एच) के उल्लंघन का प्रश्न है श्रमिक ने स्वंय प्रतिपरीक्षा में स्वीकार किया है कि वह दैनिक मजदूरी पर था परन्तु अस्थायी नहीं था, अतः वरिष्ठता सूची के रख–रखाव की अपेक्षा विपक्षी से नहीं की जा सकती है जैसा कि माननीय उच्च न्यायालय ने अवधारित किया है। इस प्रकार श्रमिक पक्ष ने धारा 25 (जी) एवं 25 (एच) का उल्लंघन साबित नहीं किया है।

38. जहाँ तक ''अनुचित श्रम व्यवहार'' का प्रश्न है श्रमिक का कथन है कि रतनगढ़ इकाई को बन्द दर्शाकर उसे बेरोजगार किया गया जो ''अनुचित श्रम व्यवहार'' है। श्रमिक का यह कहना बिल्कुल असत्य है क्योंकि प्रतिपरीक्षा में उसने स्वीकार किया है रतनगढ़ का कार्यालय 2004 से बन्द है। श्रमिक का यह भी कहना है कि वह कहीं भी कार्य करने के लिए तैयार है परन्तु इस सन्दर्भ में उल्लेखनीय है कि श्रमिक का यह दायित्व है कि वह दर्शाये कि जिस समय रतनगढ़ ईकाई बन्द की गयी उस समय अन्यत्र सदृश पद खाली था और उसे वहाँ नियुक्त होने का अधिकार था। उसके द्वारा कोई सदृश पद रिक्त नहीं बताया गया है एवं 25 (एफ) के प्राविधान के अनुसार इसका हटाया जाना गलत नहीं है इसलिए वह दूसरी जगह नियुक्ति पाने का हकदार भी नहीं है, अतः श्रमिक के साथ ''अनुचित श्रम व्यवहार'' किया गया ऐसा कहने का कोई आधार नहीं है।

39. सूचना अधिकार नियम के अन्तर्गत जो सूची श्रमिक ने प्रस्तुत की है उसमें सन् 1987 के बाद के जो व्यक्ति नियुक्त है वे सभी श्रमिक प्रेमकुमार की तुलना में भिन्न पदों पर हैं और प्रेमकुमार के सदृश पद पर कोई नहीं नियुक्त है अतः इसके आधार पर कोई लाभ प्रार्थी को नहीं मिल सकता है।

40. पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रदत्त साक्ष्य भी उक्त समस्त व्याख्या एवं विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी श्रमिक प्रेमकुमार इस तथ्य को सिद्ध करने में असफल है कि उसे धारा 25 (एफ) औद्योगिक विवाद अधिनियम के प्राविधान के उलंघन में उसकी सेवा समाप्त की गयी है, अतः सुपरिन्टेन्डेन्ट, रेलवे मेल सर्विस, एस.टी.डिवीजन जोधपुर और सब रिकॉर्ड ऑफिसर, रेलवे मेल सर्विस, एस.टी. डिविजन, बिकानेर

द्वारा दावेदार प्रेमकुमार की चतुर्थ श्रेणी पद से दिनांक 30.6.2004 से सेवा समाप्त करना वैध एवं विधि द्वारा न्यायानुमत है तथा दावेदार किसी अनुतोष को पाने का हकदार नहीं है। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तद्नुसार पारित किया जाता है।

41. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 1 मई, 2014

का.आ. 1408.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 31/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-22012/248/1997-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Dankuni coal complex of SECL, and their workman, which was received by the Central Government on 01/05/2014

[No. L-22012/248/1997-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 31 of 1998

Parties: Employers in relation to the management of Dankuni Coal Complex, CIL

AND

Their workmen

Present: Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry: Coal.

Dated: 2nd April, 2014.

AWARD

By Order No.L-22012/248/97/IR(CM-II) dated 23.07.1998 and Corrigendum No. L-22012/248/97/IR(C-II) dated 28.09.1998 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the demand of the union functioning in Dankuni Coal Complex of Coal India Ltd. for direct employment of this contractors workers who are engaged in manufacturing and maintenance job and payment to them at par with NCWA-IV is justified? If not, to what relief they are entitled?"

2. None is found present on behalf of any of the parties when the case is taken up for hearing today inspite of service of notice. It appears from the record that previously notices were also sent to the unions, but none turned up. It is to be kept in mind that the present reference has been made by the Central Government on the basis of the industrial dispute raised by the unions.

3. Considering the above facts and circumstances and the conduct of the unions, it may reasonably be presumed that the said unions are not interested in the instant reference. Perhaps they do not want to proceed with the reference case further.

4. Accordingly, the instant reference case is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 2nd April, 2014.

नई दिल्ली, 1 मई, 2014

का.आ. 1409.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जी. आर. एस. ई. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकात्ता के पंचाट (संदर्भ संख्या 25/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-42012/121/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of M/s. Garden Reach Shipbuilders & Engineers Ltd. and their workmen, received by the Central Government on 01/05/2014.

[No. L-42012/121/2002-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 25 of 2002

Parties : Employers in relation to the management of M/s. Garden Reach Shipbuilders and Engineers Ltd.

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : Mr. Dipak Kumar Ghosh, Ld. Counsel with Mr. Ranjay De, Ld. Counsel.

On behalf of the Workmen : None.

State : West Bengal. Industry: Shipbuilding.

Dated: 2nd April, 2014.

AWARD

By Order No.L-42012/121/2002-IR(CM-II) dated 30.10.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Garden Reach Ship Builders and Engineers Limited in terminating the services of Sri Samarendra Nath Mishra, Ticket No.E-753, Service man-IV of salary and wages section w.e.f. 19th September, 1988 is legal and justified? If not, to what relief the workman is entitled to?"

2. When the case is taken up for hearing today, none is found present on behalf of the workman though the management is represented by its Ld. Counsel. It appears that the workman is not appearing before the Tribunal on two consecutive dates inspite of service of notice. From the above conduct of the workman it may be presumed that he does not want to proceed with the case further. Perhaps at present he has got no grievance against the management.

3. Considering the above, the instant reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 2nd April, 2014.

नई दिल्ली, 1 मई, 2014

का.आ. 1410.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 11/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था ।

[सं. एल-22012/164/2000-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Dankuni Coal Complex of SECL, and their workman, which was received by the Central Government on 01/05/2014.

[No. L-22012/164/2000-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 11 of 2001

Parties: Employers in relation to the management of S.E.C.L.

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : None.

On behalf of the Workmen : None.

State : West Bengal. Industry: Coal.

Dated: 9th April, 2014

AWARD

By Order No.L-22012/164/2000-IR(C-II) dated nil the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Dankuni Coal Complex of SECL (a subsidiary of Coal India Ltd.) in not granting the advance increment to Sh. S. Srinivasan Rao, Data Entry Operator in obtaining Post Graduate Diploma in Industrial Relations and Personnel Management is legal and justified? If not, to what relief the workman is entitled?"

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the union at whose instance the present reference has been made did not appear on the last two consecutive dates also inspite of service of notice.

3. Considering the above facts and circumstances and also from the conduct of the union it may reasonably be presumed that the union is no more interested to proceed with the present reference case. Perhaps at present the union has got no grievance against the management.

4. Accordingly, the instant reference is disposed of by passing a "NO Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 9th April, 2014.

नई दिल्ली, 1 मई, 2014

का.आ. 1411.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-22012/221/2002-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. D No. 19/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of the South Eastern Coalfields Limited, and their workmen, received by the Central Government on 01/05/2014

[No. L-22012/221/2002-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 19 of 2005

Parties: Employers in relation to the management of South Eastern Coalfields Limited

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. Uttam Kumar Mondal, Advocate.

On behalf of the Workmen : None.

State: West Bengal. Industry: Coal.

Dated: 13th February, 2014.

AWARD

By Order No.L-22012/221/2002-IR(C-II) dated 31.03.2005 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of SECL in terminating the services of Shri Binod Jha, Driver is legal and justified? If not, to what relief the workman is entitled?"

2. Instant reference was sent by the Central Government as the union/workman raised an industrial dispute. After receiving the order of reference, all the formalities in the matter of proper adjudication of this case, have been observed. One witness of the workman was partly examined in chief. Subsequently, several opportunities were given to the union/workman to appear before the Tribunal, but none has turned up even today. The above conduct of the union/workman goes to show that the union does not want to proceed with this reference any further presumably because no industrial dispute at present exists between the parties and accordingly the instant reference has become infractuous.

3. In view of the above, the reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 13th February, 2014.

नई दिल्ली, 1 मई, 2014

का.आ. 1412.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 7/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-22012/218/2006-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the management of the Food Corporation of India, and their workmen, received by the Central Government on 01/05/2014.

[No. L-22012/218/2006-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/7/07

PRESIDING OFFICER : SHRI R.B.PATLE

The President,
FCI(Handling) workers Union,
8654, Arakashan Road,
Paharganj, New Delhi. .....Workman/Union

Versus

The District Manager,
Food Corporation of India,
Gwalior. .....Management

AWARD

Passed on this Ist day of April 2014

1. As per letter dated 2-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/218/2006-IR(CM-II). The dispute under reference relates to:

> " Whether the action of the management of Food Corporation of India in terminating the services of Shri Dharmendra Singh w.e.f. 28-11-2002 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 2/2 to 2/8. Case of Ist party workman is that the FCI is established as per act of 1964. There are about 1700 depots of FCI all over country. The workers are discharging various functions of loading, unloading food grains in wagons, trucks , sacking etc. FCI Workers Union came in existence in 2001. Union is registered under Trade Union Act. Union can expouse the cause of its members. That workman Dharmendra Singh is member of Union. He has authorized General Secretary for filing case to safeguard his interest. That area Manager of FCI Distt. Gwalior MP vide its order dated 28-11-2002 terminated services of Dharmendra Singh without following principles of natural justice. He was not allowed opportunity for his defence. That FCI was wrong in holding that the workman not reported on duty since 19-8-96. Workman had submitted letter dated 6-5-02 requesting to allow him to join duties. That his request was not allowed on the ground that the documents about his illness were not accepted.

3. Union submits that before termination of service of workman Dharmendra, no enquiry was conducted. Provisions of Section 14(4) of Industrial Employment Standing Orders Act (Central)Rules, standing orders were violated. Relevant provisions are reproduced in Para-5 of the Statement of claim. It is further contented that no enquiry was conducted against workman despite of his request , principles of natural justice were violated. In letter dated 20-11-02, the Enquiry officer was appointed but no enquiry was conducted on the ground that workman had not requested for personal hearing. The termination of service of workman is illegal.

4. IInd party management filed Written Statement at Page 10/1 to 10/9. The claim by Union about workman is denied. It is not disputed that FCI is established as Trade Act of 1964. That Dharmendra Singh S/o Pihar Singh was initially appointed as ancillary labor from 1-4-91 on the basis of biodata submitted by FCI Union. As per the biodata submitted by Union 58 workers along with workman were given appointment from 4-2-92. Workman had given his permanent address, his father's name was shown as Pihar Singh was certified by FCI Union. The name of his father was found different. The workman had obtained employment fraudulently showing name of his father as Pihar Singh. Memorandum was issued to him on 24-7-92, workman did not submit reply to it. Workman had absconded. He was served with memorandum dated 13-12-95 for his absence. His leave was sanctioned. Thereafter workman attended duties for certain period but he absconded from duties from 7-8-96. He had submitted application for joining duties on 6-5-02. The medical certificates were submitted along with the application issued from Shivam Hospital, Ghaziabad. It was found that name of father of workman was shown as Kohar Singh in the Medical Certificates. Though the medical certificates

were issued for the period 96 to 2002, his age was shown 26 years in all the certificates. The certificates were found suspicious. Workman was directed to produce certificate from medical board vide letter dated 26-6-02. Workman did not produce certificate from Medical Board. Chargesheet was issued to workman asking him to submit reply within 4 days. The chargesheet was acknowledged by workman. He submitted his reply on 14-11-02. The reply was not found satisfactory about his absence from duty. The District Manager being Disciplinary Authority invoking power under Rule 9(3) of standing orders hold workman guilty of misconduct and terminated services of the workman. It is reiterated that termination order of workman is legal. He cannot be retained in service. It is submitted that management of FCI may be permitted to lead evidence to substantiate charges against workman. On such grounds, management prays for rejection of the claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Food Corporation of India in terminating the services of Shri Dharmendra Singh w.e.f. 28-11-2002 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

6. The Union is challenging termination of services of Shri Dharmendra Singh contending that his services are terminated without enquiry in violation of Section 14/4 of IE(SOs)Act. However Union has not adduced any evidence in support of its claim. The evidence of Ist party Union was closed on 1-6-2011. The documents produced on record Exhibit W-1 is not complete document. Para 1 to 5 of the document are not produced. Document refers to termination of service of workman for misconduct under Clause 14-3(E). Doument M-1 is the biodata submitted by Union of ancillary workers in F.S.D, Gwalior Railway siding. Name of Shri Dharmendra Singh is appearing at Sl.No. 8. Workman Shri Dharmendra Singh was appointed as ancillary labour as per document Exhibit M-2 w.e.f. 1-4-91. Office order Exhibit M-3 shows that Shri Dharmendra Singh was departmentalized as per order dated 14-3-92. As per document Exhibit M-4, Shri Dharmendra Singh has requested management to permit him to join duty. He has completely recovered of his illness. Medical certificates Exhibit M-5(a) to (d) are produced. In document Exhibit M-6, workman had again requested to allow him to join duty on 14-11-2002.

7. Management filed affidavit of evidence of witness Shri K. N.Purohit in his affidavit, he has stated most of the contentions of management of IInd party. Workman was absent from duty for six years. The medical certificates were found suspicious, name of his father was recorded as Kohar Singh, his age was shown 26 years though the medical certificates were issued for the period 1996 to 2002 and therefore Medical Certificates Exhibit M-5(a) to (d) are suspicious. The chargesheet issued to workman is not produced. The counsel for management Shailendra Pandey has submitted written notes of argument narrating the details of the facts of workman joining duties and remaining absent after six years submitting application for joining duty. Chargesheet was issued to workman on 14-11-2002. That reply submitted to chargesheet by workman was not found satisfactory. Workman was found absent from duties, the medical certificates were not authentic. As Union/workman has not adduced any evidence, the action of the management cannot be said illegal for want of evidence by Ist party Union/ workman. Therefore I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

(1) The action of the management of Food Corporation of India in terminating the services of Shri Dharmendra Singh w.e.f. 28-11-2002 is proper.

(2) Union is not entitled to relief prayed by it.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour& Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 मई, 2014

का.आ. 1413.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 2/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-22012/128/2000-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 1st May, 2014

S.O. 1413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL, and their workman, received by the Central Government on 01/05/2014.

[No. L-22012/128/2000-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/2/2001

PRESIDING OFFICER: SHRI R.B.PATLE

The President,
Rashtriya Colliery Workers Federation,
Regional Stores, PO Korea Colliery,
Distt. Korea, MP .....Workman/Union

Versus

Chief General Manager,
M/s. South Eastern Coalfields Ltd.,
PO Chirimiri Colliery,
Distt. Korea (MP) Management

AWARD

Passed on this Ist day of April 2014

1. As per letter dated 8-21/11/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/128/2000/IR(CM-II). The dispute under reference relates to:

> " Whether the action of the Chief General Manager, Chirimiri Area of SECL PO Chirimiti, distt. Korea (MP) in superseding Shri U.N.Sinha and Shri B.K.S.Yadav, Store Keepers of Regional Stores, Korea of SECL, Chirimiri Area by their juniors Shri S.K.Das and others is legal and justified? If not, to what relief the workmen are entitled?"

2. After receiving reference, notices were issued to the parties. Workman Shri U.N.Sinha and Shri B.K.S.Yadav jointly filed statement of claim at Page 2/1 to 2/3. Case of both the workman is that they were appointed as General Mazdoor on 1-1-1980, they were promoted as Clerk Grade-III on 7-1-1982, their service record was satisfactory as per Circular dated 6-6-1982, applications were invited for post of Assistant Store Keepers from clerical cadre. They had submitted applications for the post they were interviewed to promote as Assistant Store Keeper from 20-8-83. That Shri S.K. Das and six others were promoted as Assistant Store Keeper on 22-6-86 as per Circular dated 26-1-1982. Earlier these employees were working in clerical cadre, they opted for cadre of Assistant Store Keeper. It is submitted that management had given seniority in cadre of Assistant Store Keeper for period they worked as clerk. Consequently Shri S.K. Das and six other persons got seniority above the workman. Shri S.K. Das and six persons were promoted as store keeper on 24-9-89 and Senior Store Keeper from 7-8-96. Ist party workman were supersede, workmen Shri U.N. Sinha and Shri B.K.S. Yadav were promoted as Store Keeper on 30-12-1992. The action of the management assigning seniority to Shri S.K. Das and six others is in violation of standing orders applicable to IInd party. That Shri S.K. Das and others were junior to Ist party workman, they should not have been given seniority while working in clerical cadre. On such ground, workman prays that management be directed to give them seniority.

3. IInd party management filed Written Statement at Page 7/1 to 7/2. There is no specific denial that workmen were engaged as General mazdoor from 1-1-1980 and promoted as Clerk Grade III from 7-1-1980. Management submits that Shri S.K. Das and others were senior to workman as clerks or Assistant Store Keeper though they were designated as Grade II clerks they were actually discharging the work of Assistant Store Keeper even before the entry of workman in service. Since Shri S.K.Das and others were discharging duty of store keeper it was reasonable to regularization, re-designating their services as Store Keeper. That re-designation is as per cadre scheme vide order dated 22-6-86. That Ist party workman were not senior to Shri S.K. Das and others in clerical cadre or in store keeper. They were declared and discharging job of store keeper since before joining of the workman. That Shri S.K. Das and others were senior to the workman. They were rightly re-designated. It is reiterated that re-designation of Shri S.K. Das and others is legal as they were discharging work of Assistant Store Keeper.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the Chief General Manager, Chirimiri Area of SECL PO Chirimiri, distt. Korea (MP) in superseding Shri U.N. Sinha and Shri B.K.S. Yadav, Store Keepers of Regional Stores, Korea of SECL, Chirimiri Area by their juniors Shri S.K. Das and others is legal and justified?	Partly Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order

REASONS

5. Though present reference relates to workman U.N.Sinha and B.K.S.Yadav, U.N.Sinha has not participated in the reference proceeding. He has not adduced evidence. Ist party workman B.K.S. Yadav filed affidavit of evidence. He has stated that he was posted as Asstt. Store Keeper on 20-8-83 as per cadre scheme. Shri S.K. Das had given option on 22-6-86 for re-designation as store keeper. Seniority of Shri S.K. Das for the post of Asstt. Store Keeper would be considered from the said date but he was given seniority from 9-10-77 is illegal. That the award

passed by this Tribunal in the matter of Shri S.K.Daswas Para-4 to 6 were overlooked by the management while giving seniority for the post of Asstt. Store Keeper to Shri S.K.Das. That cadre scheme I.I.No.34 was introduced from 17-8-84. He has referred to Note No.3of I.I.34.Workman stated that Section 3.3 of standing orders provide for regularization of employees working for 240 days etc.

6. Workman was not cross-examined on said affidavit. Workman was cross-examined on affidavit filed on 12-10-2012. Workman in his cross-examination says that he has retired from service on 31-5-2011. He was appointed as General Mazdoor on 1-1-1979. He was promoted as Clerk Grade III on 1-1-1980. Cadre Scheme to clerical cadre is applicable. That he was selected on post of Clerk Grade III as per acting allowance. Written order was issued to him. Order is produced at Exhibit W-9. He has filed affidavit in support of his claim and not in respect of Shri U.N.Sinha. He denies that employee cannot change his cadre through DPC.Ist appointment of Shri S.K.Das was 6-9-1973. While he was working as General Mazdoor, he was working in Korea Colliery. He claims ignorance whether Shri S.K.Das was posted at that time. That he was promoted as Assistant Store Keeper on 20-8-83 as Store keeper on 15-11-94 and Sr. Store Keeper on 23-2-07. The documents Exhibit W-1 shows that workman was promoted as Asstt. Store keeper from 20-8-93, Exhibit W-2 shows that 6 employees Shri Sushil Paul, Swadesh Ku. Mitra, Arun Kumar Malik. Surjit Sen Gupta, Subrat Ku. Das, D.Vasant Kumar had given option and re-designated as Asstt. Store Keeper as per order dated 22-6-86. However their new designation was made effective from 1-4-1978, 7-3-84, 1-3-84, 9-10-77, 8-9-88 without monetary benefits, no reasons are given for giving retrospective re-designation to them. The copy of award in R/33/80 clearly shows that claim of Shri S.K.Das for regularization on the post of Asstt. Store Clerk from 6-8-1973 to 9-10-77 was rejected. Para-14 of the awards reads that in the light of findings given as above. The workman is not found entitled to relief claimed by him. The said award was passed on 16-2-1983 when his claim of Shri S.K.Das was judicially rejected, there was no business of management of IInd party to grant re-designation from retrospective date. The said act on part of management is motivated to negative the award passed by this Tribunal.

7. So far as evidence of management witness Shri Ashok Sahu tried to support re-designations to Shri S.K.Das and six others stating that they were working as Assistant Store keepers and their re-designation was proper and legal. In his cross-examination, management's witness says that for change of cadre, DPC recommendation is not necessary, option is called from the concerned employees. The process is carried as per service rules. Without going through record, he was unable to tell how many post of Asstt. Store Keeper were vacant in 1986-87 or in 1977, he was unable to tell option of how many clerks were called from clerical cadre, how many clerks were re-designated as Asstt. Store Keeper. Management's witness in his further cross-examination says there is no rule in NCEA for change of clerk cadre to store cadre. Both the cadres have separate rules. He denies that Shri S.K.Das and others were working as Store keeper from 27-6-86. The management's witness claims ignorance about Note No. 4 of I.I.No.34 from 17-7-84. When claim of Shri Yadav was rejected by this Tribunal as per Award in R/33/80 granting benefit of re-designation retrospectively is not justified. It is clearly motivated to give them undue benefits.

8. Reliance is placed on ratio held in

"A.J.Fernandis versus Divisional Manager, South Central Railway and others reported in 2001(1) Supreme Court Cases 240. Their Lordship dealing with seniority and date of regularisation for post of ticket collector in S.C.Railway. considering the facts that respondent No.3 appointed as a porter in commercial department and subsequently appellant, a Porter in Transportation (Traffic) Department getting himself posted in commercial department. Both of them later appointed as ticket collectors on adhoc basis.Subsequently both of them competing for the post of Ticket collector but appellant getting selected and posted as Ticket Collector while Respondent No.3 not selected. Their Lordship held in such circumstances, irrespective of the fact that appellant had joined Commercial Department later than Respondent No.3 held Respondent No.3 couldnot claim seniority over the appellant."

In present case, the workmen were promoted as Asstt. Store Keeper on 20-8-83. Shri S.K.Das and 6 others were re-designated as Asstt. Store Keeper after option submitted by them on 22-6-86. They cannot claim seniority over workman Shri B.K.S.Yadav. The claim of Shri S.K.Das was rejected in the Award passed by this Tribunal in R/33/80. Therefore the action of the management cannot be justified when Shri S.K.Das and 6 others were granted re-designation from retrospective date, workman Shri B.K.S.Yadav is entitled to that post from date junior is given benefit. He is entitled to seniority form the date of re-designation given to Shri S.K.Das and 6 others.

Reliance is also placed in ratio held in Case of Amrjeet Singh Versus Devi Ratan reported in 2010(1)SCC-417. Their Lordship dealing with seniority criteria and length of service on which basis of deemed promotion from earlier date. Their Loreship held persons who would have been promoted earlier under unamendedrules but for an interim order passed by supreme Court held to rank senior to shoes who were deemed to have been promoted from subsequent dates. In Para-27 , their

Lordship observed the law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him."

In present case, Shri B.K.S.Yadav was promoted as Asstt. Store Keeper from 20-8-83. Shri S.K.Das and others were re-designated on their option from 22-6-86. They cannot be given retrospective re-designation prior to the date of promotion of workman Shri B.K.S.Yadav. workman as well as Shri B.K.S.Yadav and others appeared to have been retired from service. For above reasons, I record my finding in Point No.1 partly Affirmative in respect of Shri B.K.S.Yadav.

9. In the result, award is passed as under:-

(1) The action of the Chief General Manager, Chirimiri Area of SECL PO Chirimiti, distt. Korea (MP) in superseding Shri U.N.Sinha and Shri B.K.S.Yadav, Store Keepers of Regional Stores, Korea of SECL, Chirimiri Area by their juniors Shri S.K.Das and others is legal and proper.

(2) IInd party is directed to give seniority on the post of Asstt. Store Keeper to Shri B.K.S.Yadav from date of re-designation as Store Keeper given to Shri S.K.Das and consequential benefits be allowed to workman.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour& Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 मई, 2014

का.आ. 1414.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 6/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2014 को प्राप्त हुआ था।

[सं. एल-22012/217/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 1st May, 2014

S.O. 1414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 6/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of the Food Corporation of India, and their workman, received by the Central Government on 01/05/2014

[No. L-22012/217/2006-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/6/2007

PRESIDING OFFICER : SHRI R.B.PATLE

The President,
FCI (Handling) workers Union,
8654, Arakashan Road,
Paharganj, New Delhi. ....Workman/Union

Versus

The District Manager,
Food Corporation of India,
Gwalior. ....Management

AWARD

Passed on this Ist day of April 2014

1. As per letter dated 2-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/217/2006-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of Food Corporation of India in terminating the services of Shri Ram Bhool Singh w.e.f. 28-11-2002 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 2/2 to 2/8. Ist party Union submits that it is registered under Trade Union Act, 1926. General Secretary is authorized to represent the workman Shri Ram Bhool Singh from 28-11-2002 without hearing the principles of natural justice violated , no enquiry was conducted as per Section 14/4 of Industrial Employment standing Orders Act. The provisions of said rule are reproduced. Management had not conducted enquiry, principles of natural justice were violated while terminating services of the workman. On such grounds, Union prays for reinstatement with consequential benefits.

3. IInd party management filed Written Statement at Page 8/1 to 8/11. IInd party denies claim of Union. It is submitted that after Union submitted biodata of Shri Ram Bhool Singh, he was appointed in FCI from 1-4-1991. His date of birth was 5-5-1965. The name of his father was Kripal Singh. Letter was issued on 27-2-92. Workman had

suddenly absconded and remained unauthorisely absent. That as per letter dated 28-6-96 addressed to FCI District Manager, workman revealed there was enmity between workman and one Ramchand Yadav Trade Union worker. The workman has absconded. Despite of receiving letters dated 27-12-96, workman failed to join duty. He remained absent from duty from 4-1-95 to 25-4-02. Workman had submitted application on 6-5-02 requesting permission to join duties. He had submitted that he suffers from illness medical certificate obtained from Rajnagar , Ghaziabad were produced. The certificates were not accepted. Workman was not suffering from illness. He was served with chargesheet dated 2-11-2002. Workman replied to the chargesheet, reply was not found satisfactory as workman had not requested personal hearing. Invoking powers under Rule 9(3) of Standing Orders, services of workman were dismissed. The dismissal order of workman is proper and legal. IInd party prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Food Corporation of India in terminating the services of Shri Ram Bhool Singh w.e.f. 28-11-2002 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Union is not entitled to relief prayed.

REASONS

5. Though the termination of services of workman is challenged by Union on the ground that no enquiry was conducted against workman, workman was suffering from illness and he was not allowed to join duty, his services were terminated without holding enquiry. Union or workman had not adduced any evidence to substantiate their claim. The documents produced Exhibit W-1 is order of termination dated 28-11-2002. It is observed that workman has not requested for personal hearing. There was no substance in his contentions.

6. Management filed affidavit of evidence of witness Shri K.N.Purohit. he has stated most of the contentions in Written Statement filed by the management. The witness is not cross-examined in Para-14 of the affidavit of management's witness he has stated that reply filed by workman was not found satisfactory. He had not requested for holding Departmental Enquiry but requested for passing orders. Letters are produced. I donot find reason to disbelieve evidence of management's witness. There is no evidence in support of the claim of Ist party Union. For want of evidence by Union in support of its claim, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Food Corporation of India in terminating the services of Shri Ram Bhool Singh w.e.f. 28-11-2002 is legal.

(2) Union is not entitled to relief prayed by him.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1415.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 235/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-41011/15/99-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 235/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway, and their workman, received by the Central Government on 16/04/2014

[No. L-41011/15/99-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 17th February, 2014

Reference (CGITA) No. 235/2004

Reference (ITC No. 166 of 1999 (old)

1. The General Manager,
Western Railway,
Churchgate, Mumbai-400001

2. The Divisional Railway Manager,
Western Railway,
Vadodara Division,
Pratapnagar
Baroda-390004 ..... (1st party)

And

Their workman
Through the President
Paschim Railway Karmachari Parishad,
E/209, Sarvottam Nagar,
Near Railway Colony, Sabarmati,
Ahmedabad(Gujarat) .....(2nd party)

For the First Party : Shri Mukesh Pandit, Advocate

For the Second Party : Shri Raghuvir S. Sisodia, President, P.R.K.P.

AWARD

The Government of India/Ministry of Labour, New Delhi vide Order No. 41011/15/99/IR(B-I) dated 11.11.1999 under clause (D) of sub section (1) and sub section (2A) of section 10 of the Industrial Disputes Act, 1947 , referred the dispute for adjudication to Industrial Tribunal, Ahmedabad (Gujarat) specified in the Schedule:-

SCHEDULE

"Whether the demand of Union Paschim Railway Karamchari Parishad, Ahmedabad for granting the benefit of stepping up of pay of Shri P.K. Mukherji and Shri B.S. Pandya, chief Reservation Inspector at Par with their Juniors Shri K.P. Khakkar and Shri P.B. Shukla is legal, proper and justified? If so, to what relief these two workmen Mr. P.K. Mukherji and Mr. B.S. Pandya are entitled to and from which date and what other directions are necessary in the matter?"

2. The case of the 2nd party as per statement of claim (Ext.3) is that Shri P.K. Mukherji and Shri B.S. Pandya along with Shri K.P. Khakkar and Shri P.B. Shukla were appointed as Enquiry-cum-Reservation clerk over the Western Railway in the Scale of Rs. 330-560. Shri P.K. Mukherji and Shri B.S. Pandya were posted at Ahmedabad and Shri K.P. Khakkar and Shri P.B. Shukla were posted at Rajkot in the year December, 1980. As per rules their seniority was under control of Head quarters' office. So all promotion etc. were controlled by the Head Quarter, Mumbai though the staff was posted at different station/ Division of the Western Railway. Shri P. K.Mukherji and Shri B.S. Pandya as per rules had claim of earlier promotions then Shri K.P. Khakkar and Shri P.B. Shukla. In December, 1982 some vacancies fell vacant in scale Rs. 425-640 at Rajkot. The Railway instead of posting senior persons like Shri Mukherji and Shri Pandya of Ahmedabad on promotion to Rajkot promoted Shri Khakkar and Shri Pandya though junior on 08.12.1982 in scale Rs. 425-640 overlooking the claim of Mukherji and Pandya. These promotions were against the para 320 on Indian Railways Establishment Manual. Shri Mukherji and Shri Pandya were senior to Shri Khakkar and Shri Shukla and as such they had earlier claim of promotion. But Shri Khakkar and Shri Shukla continuously officiated from 08.12.1982 till regularised in the year 1985 by the Head Quarter in the scale Rs. 425-640. The denial of promotion to Shri Mukherji and Shri Pandya at Rajkot caused heavy financial and status loss to them because Shri Khakkar and Shri Shukla got early promotions in different grades like 1600-2660 and 2000-3200 at Rajkot itself. If Shri Mukherji and Shri Pandya had been posted at Rajkot in 1982 on promotion instead of Shri Khakkar and Shri Shukla they would have got all the privilege in the grade 1600-2600 and 2000-3200 whereas Shri Mukherji , Pandya, Khakkar Shukla and others got regular promotion only in 1985 vide CCS(E) CCG's letter No. EC/839/4/38/2 of 17.12.1984. Divisional Order No. EC/839/4/22 Pt. dt. 19.01.12985 when head quarter office issued the promotions ordered and they were fixed at Rs. 425 in the Scale 425-640, whereas Shri Khakkar was at Rs. 455 itself in the scale 425-640 though juniors but because they were given ad hock promotion in 1982 itself at Rajkot. The Head Quarter office failed to safe guard the privileges of seniors like Mukherji and Pandya and they were put to loss of Rs. 30/- though Mukherji, Pandya, Khakkar and Shukla are from the same cadre. The grade in which they have been promoted are identical and in same cadre. On these grounds relief sought for is that the pay of Shri P.K. Mukherji and Shri B.S. Pandya be refixed in scale 425-640 at par with Shri K.P. Khakkar and Shri P.B. Shukla with all consequential benefits payment of arrears and Shri P.K. Mukherji and Shri B.S. Pandya be given promotions in different grades the day their juniors Shri Khakkar and Shri Shukla were promoted with payment of arrears and also to any relief to which the workman Mukherji and Pandya are found entitled.

3. In the reply (Written statement) Ext.7 para 1 and 2 of statement of claim are admitted as true and correct. The contention of para 3 and 5 of statement of claim have also not been denied and it has been submitted that the matter is already referred to the H.Q. office to the S.P.O. (W) CCG vide DO letter No. EC/P/ 205 dated 19.11.1999 but no reply is received until now. 1st party will take necessary action on receipt of reply from the H.Q. office. As regards para 4 of statement of claim no comment made. No comment to para 6 &7 of S/c since formal with respect to para 8, it has been contended that the 2nd party is not entitled to any relief and the reference be rejected.

4. As per rival contention in the pleadings of the parties, the following issues are taken for discussions and consideration:

ISSUES

(i) Is the reference maintainable?

(ii) Has the 2nd party valid cause of action?

(iii) Whether the demand of Union(PRKP) for getting the benefit of stepping up of pay of Shri P.K.

Mukherji and Shri B.S. Pandya chief Reservation Inspector at par with their Juniors Shri K.P. Khakkar and Shri P.B. Shukla is legal, proper and justified?

(iv) Whether these two workmen Mr. P.K. Mukherji and Mr. B.S. Pandya are entitled to the stepping up of pay? If so, from which date?

(v) What other directions are necessary in the matter?

FINDINGS

5. **ISSUE No. iii & iv: -** The 2nd party submitted four documents with list Ext.8 which were issued by the Railway. (1) Head Quarter (W. Rly) letter No. EC/839/4/38/ 2/ dated 17.12.1984(2) Rly Board's letter of 28.08.1985 regarding adhoc promotion (3) Head Quarter (W. Rly) letter No. EC/1030/4/23 dated 03.10.1985 and (4) DRM's Rajkot letter dated 20.03.1989 addressed to DRM (E) Baroda regarding pay of K.P. Khakkar and P.B. Shukla and its copy received by the lawyer of the 1st party and production allowed on 08.07.2002. Then application dated 19.10.2004 of 2nd party was filed for closing its evidence and this pursis was seen by the 1st party's lawyer. The 1st party examined a witness Anilkumar Ramanlal Mehta on 12.09.2005. He deposed in examination in chief when vacancy falls vacant in any division officiating benefits are given to the senior most of local unit. If local person can be made available the said benefit is not availed to other person. In cross examination he deposed that the branch officer passes the order of officiating when regular promotion order is issued, seniority is ascertained. Officiating order is in force until regular order is passed. The said case is not of adhoc promotion and permission is required to be obtained from higher officer for the time more than three months. If the same is continued in the officiating, he is given the benefit in the salary when he is given regular promotion. Officiating is stop-gap arrangement and if a person available in the local unit, the same is given to him. Officiating was given to Mr. Khakkar and Mr. Shukla for some time. It was the responsibility of the concerned officer that damage is not caused to the senior due to centralized officiating. The regular promotion of Mr. Khakkar, MR. Shukla, Mr. Pandya and Mr. Mukherji was the same.

6. The 2nd party representative Shri S.B. Nigam had filed application on 19.10.2004 for closing it evidence which was seen by the then Rly Lawyer Shri R.K.P. Sharma and the evidence of the 2nd party was treated as closed. Thereafter the 1st party witness AnilKumar Ramanlal Mehta was examined on 12.09.2005 whose evidence has been discussed above. Then the 1st party's lawyer also filed pursis on 12.09.2005 closing evidence of the 1st party which was seen on behalf of the 2nd party. Then on 02.01.2006, the 2nd party representative Shri S.B. Nigam submitted written argument and its copy was received by the 1st party's lawyer Shri R.K.P. Sharma. With the written argument extract off swami's compilation of F.R. &SR part 1 of 1985 of page 75 rule (10) has been filed. Also copy of judgement dated 04.11.1988 of CAT Ahmedabad has been filed through which direction was given to the respondent (Union of India /Rly) for removing the anamoly of pay of applicant Asilal U. Kuraria had been given. The stage of the 1st party for leading further evidence was reopened by order passed below Ext.13 the pursis of 1st party dated 02.04.2012. On the same date 2nd party's representative Shri R.S. Sisodia filed a pursis (Ext.14) for reopening the stage of 2nd party to lead oral evidence on which objection was noted by the 1st party's the then Lawyer Shri R.K.P. Sharma that 2nd party's argument are completed. The pursis was ordered to be kept on the record by order passed below Ext.14.

7. The 1st party's lawyer filed pursis (Ext.15) on 18.04.2012 for allowing to produce documents and as per list dated 18.04.2012 (Ext.16) 15 documents were produced. Ext. 16/1 is promotion letter of Shri P.K. Mukherji from ECRC to ARS dated 19.01.1985. Ext. 16/2 is promotion letter dated 13.02.1985 as ARS in grade 425-640(R) who taken in dependent charge from 31.01.1985 and direction for drawing pay accordingly. Ext. 16/3 is notice of imposing of penalty to Shri P.K. Mukherji dated 14.10.1985 regarding censured Ext. 16/4 is standard form of memorandum of charge for imposing minor penalties dated 17.11.1987. Ext. 16/5 is letter of DRM, Baroda to S.S. Ahmedabad dated 23.08.1988. On the subject stepping up of pay equal to juniors of Shri Mukherji, ARS.ADI informing that stepping up of pay is not admissible in terms of Railway board's letter No. PO III 74/ROP-I/32 dated 04.09.1974 for this informing to Shri P. K. Mukherji. Ext. 16/6 is letter of DRM, Baroda to S.S. Ahmedabad dated 27.02.1989 to the effect that juniors employees pointed out by the employee (P.K. Mukherji) are working on Rajkot Division and they belong to different cadre and seniority and as such stepping up of pay is not admissible in terms of Rly. Board's letter P.O. III-74/ROP/1/32 dated 04.09.1974 para (a) circulated under G.M. (E) CCL's letter No. E (P&A) 11773/0 vol. IV dated 09.09.1974. Ext. 16/7 is letter of P.K. Mukherji to DRM, Baroda dated 29.03.99 and Ext. 16/8 is Note P.K. Mukherji's interview to D.R.M. Baroda dated 03.04.1989 with such order that Shri Mukherji came under administrative control of BRC division due to de-centralization of selection of ARS scale 425-640 (R) after 01.08.1985. Though the two employees are junior to Shri Mukherji were promoted as ARS scale 425-640 (R) under the same order by which Shri Mukherji was promoted but due to local vacancy in scale Rs. 425-640 (R) on Rajkot Division., these two employees junior to Shri P.K. Mukherji have officiated as ARS from 08.12.1982 on Rajkot Division which is accelerated promotion being local unit. Stepping up of pay is therefore, not admissible in such case as per rule. Ext. 16/9 is letter of SS Ahmedabad to DRM Baroda of taking charge by P. K. Mukherji as CHRI(Chief Reservation Inspector) dated

08.10.1993. Ext. 16/10 is letter of DRM dated 27.04.1995 to L.E.O. , Ahmedabad. Ext. 16/11 is letter of B.S. Pandey to L.E.O. Ahmedabad dated 18.12.1995. Ext. 16/12 is letter of adhoc promotion of P.K. Mukherji and B.S. Pandya dated 08.09.1997 from CHRI to CESRS scale 2000-3200. Ext. 16/13 is letter of G.M. H.O. Churchgate W.R. dated 15.01.1996 to DRM (E) Baroda informing on the subject stepping up of pay-equal to juniors. Case of P.K. Mukherji, ARS/ADI-that as per Board's letter No. PCIII/87/FP/9 dated 10.09.1987, there is no case for stepping up of pay when junior is promoted earlier than senior as it tentaments to accelerated promotion. Ext. 16/14 is letter dated 24.09.1998 as to promotion of P.K. Mukherji and B.S. Pandya (2nd party workman) as CHRI in the scale 1600-2160 along with other employee ARS. Ext. 16/15 is extract of railway establishment Rules page-328 go to support the case of the 2nd party that-normally empanelled employee should be appointed against the selection post, but in case where no empanelled employee is available and it became inevitable to make local arrangement, it should be made for a short period as possible, but not more than three months. The 1st party also submitted a documents with list Ext.18 dated 27.04.2012 and its copy received by the 2nd party representative. Ext. 18/1 is service sheet of Shri P.B. Shukla (admittedly Junior to Shri P.B. Mukherji and Shri B.S. Pandya). It shows that P.B. Shukla was appointed as Enquiry cum reservation clerk (ECR) on 18.12.1980 and promoted as ARS Rajkot in scale 425-640 (R) on 08.08.1983, but again reverted to his original post of ECR scale 330-560 on 07.05.1984. Again promoted to officiate as ARS scale 425-640 (R) and posted at Jamnagar on 16.01.1985 again posted as ARS RST. Vide order dt. 27.05.1985. The 1st party has not filed service sheet of Shri K.P. Khakkar against whom one of the 2nd party workman Shri P.K. Mukherji in claiming seniority for stepping up of his pay.

8. On behalf of the 2nd party three documents were submitted on 08.05.2012 with a list Ext.19 marked Ext. 19/1 to 19/3 and its copy given to 1st party's lawyer. Ext. 19/1 is DRM (E) Baroda letter NO EC /P/205 dated 11.12.1995 addressed to GM(E) OCG admitting to this extent that the two employees of Rajkot Div.Mr. K.P. Khakkar and B.S. Shukla are junior to Mr. P.K . Mukherji but Mr. Mukhrji come under administrative control of BRC Division due to decentralisation of selection of ARS scale 425-640 after 01.08.1985 vide HQ No. E (834/4/17) of 31.07.1985 and that stepping up of pay is not admissible in such case and in this line LEO ADI was to be informed. Ext. 19/2 is order of CAT-Mumbai passed in O.A. No. 108 of 1991 decided on March 23, 1994 in the case of V.B. Lal vs. Union of India and others and order was passed directing to respondant Rly. to step up the pay of the applicant to 3300 with effect from 08.10.1986 with all normal benefits of back wages and arrears of pay and allowance. Ext. 19/3 is letter No. SC 1030/4/23 H.Q. office Churchgate, Mumbai dated 03.10.1985. On the subject seniority of non-gazetted staff commercial Department- Reservation staff – line Unit with reference to H.Q. Office letter No. EC 1030/4/23 dated 30.06.1979 by which integrated seniority list of reservation staff in the scale Rs. 700-900 (R) Rs. 550-750 (R), Rs. 455-700 (R) and 425-640 (R) is enclosed. Para 3 of letter say that if any employee has any grievances against the seniority assigned to him/her in the integrated seniority list he/she may submit representation within two months from the date of issue of this letter. Para 5 of letter is regarding decentralization of ECRC in scale 330-560 (R) and ARS in scale Rs. 425-640 (R) with effect from 01.08.1985. Extract copy of list from Sl. No. 1 to 35 in group IV ARS has been filed to show that name of P.K. Mukherji and B.S. Pandya are at Sl. No. 7 & 8 (BRC) having date of birth 19.01.1955 and 14.04.1955 respectively and date of appointment 13.12.1980 where as name of K.P. Khakkar and P.B. Shukla are at Sl. No. 11 and 12 (RJT) having date of appointment 18.12.1980 clearly go to show that Shri P.K. Mukherji and B.S. Pandya are senior to Mr. K. P. Khakkar and P.B. Shukla in the cadre of ARS but Mr. P.K. Mukherji and B.S. Pandya pay was admittedly fixed less than that of K.P. Khakkar and P.B. Shukla whereas K.P. Khakkar and P.B. Shukla were to officiate as ARS at Rajkot Division for not more than three months as per adhoc arrangement as per Ext. 16/15= Ext. 8/2 (rly. Board's letter dated 28.08.1985) sub para (iii).

9. The affidavit of P.K. Mukherji in support of oral evidence filed without reopening the case of the 2nd party which had long been closed on 19.10 2004 by filing pursis by representative Shri S.B. Nigam for 2nd party so the affidavit of P.K. Mukherji at Ext 20 was expunged vide order sheet 03.09.2013 on behalf of the 2nd party (Union) three documents with list Ext. 23 was submitted on 13.08.2013 which are marked Ext. 23/1 to 23/3. Ext. 23/1 is service sheet of Mr. P.K. Mukherji CERS. Ext. 23/3 is summary of pay of mr. P.B. Shukla, K.P. Khakkar , p.K. Mukherji and B.S. Pandya.

10. As per written argument of 2nd party (Union) submitted on 02.01.2006 the concerned employee Shri P.K. Mukherji and B.S .Pandya were appointed as reservation clerk along with Shri K.P. Khakkar and P.B. Mukherji and B.S. Pandya were posted at Ahmedabad and Mr. Khakkar and Shukla were posted at Rajkot and others were posted at different stations. The 1st party in w.s. para 3 has admitted that Mr. Mukherji and Mr. Pandya are senior to Mr. Khakkr and Shukla and their seniority and promotion were controlled by Head quarter i.e. Western Railway Chuchgate, Mumbai, General manager's offices till 01.08.1985 (Ext.8/3) It has been further argued that when in December two vacancies, occurred in Rajkot and at that time seniority of ECRC was controlled by H.Q. office Mumbai but the Railway instead giving promotion and posting to Shri P.K. Mukherji and Shri Pandya to Rajkot promoted their juniors Shri K.P. Khakkar and Shri Shukla and if such promotion by local available ECRC had been

made it was addhoc and in no case can be extended beyond three months or until as per H.Q. controlled seniority ECRS senior are posted at Rajkot on falling of such vacancy. But adhoc promotion of Mr. Khakkar and Shukla was kept in force against the Railway Board's letter dated 28.08.1985 vide Ext. 8/2 para (iii,iv &v). It has also been pointed out in written argument that the Rly (1st Party) in para 4 of their w.s. admitted the anamoly and stated that they have moved the matter to H.Q. Office, Mumbai on 19.11.1999. Further argument is this that irregular promotion to Shri Khakkar and Shukla was for long duration, adversely affected to Mukherji and Pandya by way of financial and status loss as Khakkar and Shukla though juniors got higher grades at Rajkot earlier than Mr. Mukherji and Pandya. Reliance was also placed upon fundamental Rule No. 22(C) para 10 (a)- for removal of anamoly stepping of pay of seniors on promotion drawing less pay than his juniors. The extract of ENC is attached with written argument of the 2nd party Union. As per chart showing summary of pay of Mr. Khakkar vis a vis Mr. Mukherji and Mr. P. B. Shukla vis-à-vis Mr. B.S. Pandya produced by the 2nd party at Ext. 23/3 go to show anamoly in getting less pay in the scale of 425-640 (R.P) by Mukherji and Pandya though senior because of wrong promotion given by the Rly to Juniors though seniors were available in the year 1982 to be posted at Rajkot when the vacancies had fallen and more so at that time seniority and promotion of ECRS were controlled by the H.Q. and not by the Division since decentralisation of promotion had come into force in the year 1985 (01.08.1985) and not before. In support of such written argument judgment of the Hon'ble Bench of CAT, Ahmedabad dated 04.01.1988 in the case of Asulal U. Kureria, M.R. Anand vs. Union of India & others has been cited with its copy attach therewith the written argument.

11. On the other hand, the learned Advocate for the 1st party in his argument pointed out that the case of one of the concerned employee Mr. B.S. Pandya is not at all fit to be examined since he (Mr. Pandya) had been awarded the penalty of withholding of increment for 2 years from 01.12.1984 to 01.12.1986 whereas Shri P.K.Mukherji had drawn the yearly increment regularly. In argument Ext. 16/10 (Divisional Office Baroda) letter dated 27.04.1995 has been referred. More show the comparative chart (summary of pay)Ext. 23/3 of the 2nd party go to defeat the claim of Shri B.S. Pandya regarding stepping up of his pay as two increment stopped, prior to 31.01.1985.

12. As per Ext. 8/1 H.Q. Churchgate, Mumbai order dated 17.12.1984 on the subject of promotion and transfer of class III staff in commercial Dept. Reservation staff-Line Unit the employees were given promotion to ARS (Assistant Reservation Supervisor) scale 425-640 (R) the name of P.K. Mukherji and B.S. Pandya are at Sl. No. 49 and 50 respectively whereas name of Shri K.P. Khakkar and P.B. Shukla are at Sl. No. 54 and 55 respectively. So according to this order if there occurred any anamoly in pay of seniors it should be stepped up as per FR. 22-C (Swami's compilation) as mention in the written argument of the 2nd party dated 02.01.2006. As per Ext.16/1 which is copy of Baroda Div. Office order dated 17.01.1985 the employees including P.K. Mukherji was promoted as ARS scale 425-640 (R) as per order of H.Q. order dated 17.12.1984 (Ext. 8/1). The name of P.K. Mukherji is at Sl. No. 14 showing present designation EC scale 330-560 ADI and revised position A.R.S. scale 425-640 at ADI within Baroda Division. But his junior Mr. Khakkar and Shukla got accelerated promotion being local unit as per Ext. 16/10 which could not have been granted since they are to officiate as ARS , Rajkot Div. for not more than three months in the year 1982 (08.12.1982) as per Ext/8/2 (already discussed above). But Mr. Khakkar and Shukla remained officiating till their regular promotion along with Mr. P.K. Mukherji and B.S. Pandya be H.Q order dated 17.12.1984 (Ext.8/1) in which Mr. Khakkar and Shukla are shown junior to Mr. Mukherji and Pandya in A.R.S. Cadre. So it is very surprising why the Rly administration failed to remove atleast pay anamoly to Shri P.K. Mukherji who had not been awarded any penalty as per Ext. 16/10 the documents produced by the 1st party. In the case of V.B. Lal vs. Union of India and others (1984) 28 Administrative Tribunal case (472) stepping up of pay was allowed to the applicant. But the Rly. Administration inspite of series of representation and also seeking for personal interview dated 03.04.1989 by P.K. Mukherji with D.R.M. BRC. Stepping up of pay was not allowed which is against judgment of administrative Tribunals already discussed above and also against the F.R. 22C para 10 already discussed above.

13. As per discussion and considerations of the oral evidence of the 1st party witness Shri Anilkumar and the admission made by witness and by the 1st party in their w.s. and also taking into account of difference judgment/ Order of the Administrative Tribunal and also in view of H.Q. order dated 17.12.1984 (Ext. 8/1) issued when the promotion of ECRC and ARS are centralized through H.Q office and seniority and promotion had not been decentralized division wise , the claim of Shri P.K. Mukherji is justified in stepping up of pay on regular promotion in ARS vide H.Q office order dated 17.12.1984 (Ext.8/1) and on BRC div. order of promotion (ext.16/1) in view of H.Q. order dated 17.12.1984. Stepping up of pay Shri Mukherji was justified to remove the anamoly of less pay of Mr. P.K. Mukherji than Mr. K.P. Khakkar. The case of concerned employee Mr. B.S. Pandya is not fit to be considered because of penalty of withholding of increment for two years from 01.12.1984 to 01.12.1986. So the claim of workman Shri B.S. Pandya by the Union for stepping up of his pay is not at all justified since B.S. Pandya is out of court in this case. As per Ext. 16/2 Shri P.K. Mukherji ECADI in grade 330-560 was promoted as ARS grade 425-640(R) and had taken independent charge from 31.01.1985 (BN).

So from 31.01.1985 Shri P.K. Mukherji is entitled for stepping up of his pay at par with his junior Shri K.P. Khakkar ARS, Rajkot.

14. Thus Issue No (iii) is answered in this way that the demand of Union (PRKP) for getting the benefit of stepping up of pay of Shri P.K. Mukherji at par with his junior Shri K.P. Khakkar is legal, proper and justified. But the demand of Union for Shri B.S. Pandya for stepping up of his pay at par with Shri P.B. Shukla is not legal and justified. Issue No .iv is answered in this way that out of the two workman Mr. P.K. Mukherji and Mr. B.S. Pandya only Mr. P.K .Mukherji is entitled to the stepping up of pay at par with Mr. K.P. Khakkar w.e.f. 31.01.1985. Shri B.S. Pandya is not entitled for the benefit of stepping up pay in this case.

15. **ISSUE No. I & II:-** In view of findings to Issue No. iii & iv in the foregoing paras the reference is maintainable so far as demand of union for workman Shri P. K. Mukherji is concerned. Likewise, the 2nd party (Union) has valid cause of action so far as the claim of workman Shri P.K. Mukherji is concerned. For the claim of other workman Shri B.S. Pandya the 2nd party Union has no cause of action.

16. **ISSUE No. V : -** The 1st party is directed to remove the pay anamoly of the workman Shri P.K. Mukherji by stepping up his pay at par with his Junior Shri K.P. Khakkar w.e.f. 31.01.1985.

The reference is allowed in part accordingly.

The 1st party to comply with the order within two months of receipt of the award.

This is my Award.

Let two copies of the award be sent to the appropriate Government for publication u/s. 17 of the I.D. Act.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 64/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-41012/30/2013-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 64/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, which was received by the Central Government on 16/04/2014

[No. L-41012/30/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/64/2013 Date: 04.04.2014.

Party No. 1 : The Senior Divisional Personnel Officer, South East Central Railways, Kings Way,Nagpur

Versus

Party No. 2 : The Gopal Kishan Zodge, R/o Saleshari, Post : Thutanbori, The : Bhiwapur, Distt. : Nagpur. Nagpur

AWARD

(Dated: 04thApril, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of South East Central Railways and the workman,Shri Gopal Kishan Zodge for adjudication, as per letter No.L-41012/30/2013-IR (B-I) dated 18.10.2013, with the following schedule:-

> "Whether the action of the management of South East Central Railways, Nagpur in terminating the services of Shri Gopal Kishan Zodge, substitute Bunglow Peon/ TADK vide their order dated 26.06.2011 is fair, just or legal? To what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

Inspite of sufficient service of the notice, the workman neither appeared nor filed any statement of claim. The party No.1 appeared through their advocates on 23.12.2013.

Inspite of adjourning the case twice for filing of statement of claim by the workman, neither the workman appeared nor filed any statement of claim. So, on 04.04.2014, the reference was closed, holding that the workman was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails

to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that as the workman has neither appeared nor filed any statement of claim, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1417.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इरकोन इनटरनेशनल लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या 32/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/04/2014 को प्राप्त हुआ था।

[सं. एल-41012/40/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 32/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2 Dhanbad now as shown in the Annexure in the Industrial Dispute between the management of IRCON International Ltd. and their workman, which was received by the Central Government on 21/04/2014

[No. L-41012/40/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an IndustrialDispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO. 32 OF 2011.

PARTIES : Smt.Rita Devi.
Moh: Lodipur, Christian Colony,
Patna-1(Bihar)

Vs.

The General Manager,
IRCON International Ltd.,
B.C.Patel Path, Patna (Bihar)

APPEARANCES :

On behalf of the workman/Union	:	None
On behalf of the Management	:	None
State	:	Jharkhand
Industry	:	Railways

Dhanbad, the27th March, 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-41012/40/2011-IR(B-I) dt.28.11.2011.

SCHEDULE

"Whether the action of the Management of IRCON International Ltd., Patna in terminating he services of Smt.Rita Devi w.e.f. 01.06.2007 without any notice and without following the provisions under section 25 F of Industrial Dispute Act.,1947 is legal and justified? Whether Smt.Rita Devi is entitled for her reinstatement with full back wages and continuity in service? To what relief the Smt.Rita Devi is entitled?"

2. Neither of the parties appeared nor workwoman Rita Devi filed her written statement along with any documents despite three Regd.Notices issued to her on her address noted in the Reference itself. Under these circumstances, it appears that workwoman Rita Devi is not willing to contest the case for the reason best known to her. Hence the case is closed as no I.D.existent between both the parties; accordingly No Dispute Award is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1418.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कटोलिक सरेन बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अरूनाकुलम के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/38/2012-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 25/2012) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between management of Catholic Syrian Bank Limited, and their workman, which was received by the Central Government on 16/04/2014

[No. L-12011/38/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Wednesday the 12th day of March, 2014/ 21st Phalguna 1935)

ID 25/2012

Workman/Union : The General Secretary Catholic Syrian Bank Staff Association AIBEA House, Kaliath Royale Square Palace Road Thrissur (Kerala) - 20 By M/s. ANP Associates

Management : The Chairman Catholic Syrian Bank Ltd. Head OfficeThrissur (Kerala) By M/s. B S Krishnan Associates

This case coming up for final hearing on 12.03.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour as per Order No-L-12011/38/2012-IR(B-I) dated 28.09.2012 referred this industrial dispute to this tribunalfor adjudication.

2. The dispute is:

"Whether the action of the management of Catholic Syrian Bank in denying the payment of over time allowance to Shri Jimmy C Akkarappatty for his work on 1.10.2009 till 7:15 PM; on 8.1.2010 till 7:00PM and on 28.1.2010 till 9:15PM is legal and justified? To what relief the workman is entitled?"

3. After submission of pleadings by the parties the case was posted in the Lok Adalath as agreed to by both sides. The matter was settled between the parties by entering into a full and final settlement. They have jointly filed compromise incorporating the terms of the settlement. Hence an award can be passed in terms of the compromise.

4. In the result an award is passed in terms of the compromise which will form the part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 12th day of March, 2014.

D SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID No. 25/2012

Catholic Syrian Bank Staff Association. …..Union

Vs

Catholic Syrian Bank Limited …Management

The matter was taken up in Lok Adalat and the parties agreed to settle the dispute on the following terms:-

1. The management agreed to pay a sum of Rs.2,133/- (Rupees Two thousand one hundred and thirty three only), towards their claim to the workman.

2. It is agreed by both the parties that the settlement in the above matter shall not be treated as a precedent in any other matter.

3. The management agreed to pay the above said amount of Rs. 2,133 within one month from the date of this settlement.

Subject to the above the Union agreed to withdraw all their contentions in the above ID.

Dated this the 12th day of March, 2014.

Union : Management :

Counsel for Union : Consel for Management :

नई दिल्ली, 2 मई, 2014

का.आ. 1419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 108/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/87/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 108/11) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of India , and their workman, which was received by the Central Government on 17/04/2014.

[No. L-12012/87/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, ROOM NO.33, BLOCKS-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI 110032

Present :—Shri HARBANSH KUMAR SAXENA

ID No. 108/11

Sh. Gulab Chand

Versus

State Bank of India.

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/87/2011-(IR(B-1)) dated 24.11.2011 referred the following industrial Dispute to this tribunal for the adjudication :-

> "Whether the action of the management of State Bank of India, Region –II, Parliament Street New Delhi in terminating the services of Sh. Gulab Chand S/o Chander Saini , Ex-Workman w.e.f 11/11/2009, is legal and justified? To what relief the workman is entitled?"

On 08.12.11 reference was received in this tribunal. Which was register as I.D No. 108/11 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Gulab Chand not filed claim statement but management in response to reference filed response wherein it mentioned as follows:-

1. The terms of reference reads as under:

> "Whether the action of the management of State Bank of India, Region –II, Parliament Street New Delhi in terminating the services of Sh. Gulab Chand S/o Chander Saini , Ex-Workman w.e.f 11/11/2009, is legal and justified? To what relief the workman is entitled?"
>
> Sh. Gulab Chand was engaged as canteen boy by the Local Implementation Committee, Ferozepur, Jhirka Branch from 5.2.1993. On 30.11.1995, his services were disengaged by the Local Implementation Committee, Ferozepur , Jhirka Branch. The applicant raised an Industrial Dispute Wherein vide award dated 08.11.2006, the Hon'ble Industrial Tribunal concluded that "The action of management of State Bank of India in terminating the services of Sh. Gulab Chand Messenger-cum-Water boy-cum-General Servant cum canteen boy w.e.f 1.12.1995 is neither just nor fair. The workman applicant is entitled to be reinstated with 25% back wages. The management should reinstate the workman within two months from the publication of the award and pay him arrears of back wages."
>
> In terms of the award, the Applicant was reinstated in the supernumerary capacity and paid the back wages. In terms of the award, he was reinstated as a temporary employee. He was retrenched from the services of the Bank after paying him retrenchment compensation and one month pay (i.e. Rs. 24000 + Rs. 3000/-) on 11.11.2009. Since the retrenchment has been done in compliance of Sec. 25F of the Industrial Disputes Act, the same is legal and justified. No unfair labour practice was ever adopted by the management. The Applicant accepted the retrenchment compensation and one months pay without any demur.

Since he accepted his full and final benefit voluntarily, he did not prefer any execution of the award. He has not filed any claim before the Ld. Central Govt. Industrial Despite various notices.

Thus there exists no "industrial dispute". The reference be decided in favour of the management.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceeding of the case or liable to be dropped and no dispute award is liable to be passed. Reference is decided accordingly.

No Dispute Award is accordingly passed.

Dated : 02-04-2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1420.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार त्रिपुरा ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण गुवाहाटी के पंचाट (संदर्भ संख्या 3/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/60/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 3/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tripura Gramin Bank, and their workman, which was received by the Central Government on 01/04/2014

[No. L-12011/60/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present : Shri L.C.Dey, M.A., LL.B., Presiding Officer, CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 03 of 2012.

In the matter of an Industrial Dispute between :-

The Management of Tripura Gramin Bank, Tripura.

-Vrs-

Their workmen rep. by the General Secretary, Tripura Gramin Bank Employees Association, Agartala, Tripura.

APPEARANCES

For the Workman. : Mr. A. D. Choudhury, Advocate, Mr. S. Deka, Advocate.

For the Management : Mr. A. Dasgupta, Advocate. Mr. S. Dutta, Advocate.

Date of Award: 31.03.2014

AWARD

1. This Reference has been initiated on an Industrial Dispute raised by the Tripura Gramin Bank Employees Association, Agartala, Tripura against the Management of Tripura Gramin Bank, Agartala, consequent upon denial by the Management the fitment of pay in respect of 47 Messenger-cum-Peons as per National Industrial Tribunal (NIT) Award; which was referred by the Ministry of Labour for adjudication vide their Order No.L-12011/60/2011-IR (B-I) dated 25.10.2011 on the FOC Report forwarded by the Assistant Labour Commissioner (C), Silchar, No.8 (13/ 2008-S/A-3497 dated 08.08.2011. The Schedule of this reference is as under:

SCHEDULE

"Whether the action of the management of Tripura Gramin Bank (TGB), Agartala in denying fitment of pay in regards to forty seven (47) Messenger-Cum-Peons (as per list enclosed) as per NIT Award counting their services from the date of initial engagement/appointment as daily rated worker/part time workers is legal & justified? To what relief the workmen are entitled ?"

2. On receipt of the order from the Ministry of Labour, Government of India, New Delhi, this reference case was registered and notices were issued by Registered Post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statement along with the relevant documents in support of their claim. Accordingly both the parties appeared and submitted their respective claim statement/written statement. Thereafter due to absence of the Tripura Gramin Bank Employees Association in stead of getting sufficient opportunities, the case proceeded ex-parte against them.

3. The fact of the case of the Tripura Gramin Bank Employees Association, (in short, the Association) is that the Regional Rural Banks (hereinafter called RRB) were incorporated under the Provision of Regional Rural Bank's Act,1976 and the Tripura Gramin Bank is one of the said RRBs which was constituted for Banking operation in the Rural Sector, having 50% share hold by the Central Government, 15% by the concerned State Government wherein the bank is situated and 35% by the sponsored Bank which means a nationalized bank by which such RRBs have been sponsored. The United Bank of India is the sponsored bank in respect of the Tripura Gramin Bank. The employees of RRBs all over India has been making a grievance that in the matter of their pay structure, they are entitled to get the same pay, as is available to the employees of the Rural Branches of different nationalized commercial banks but the Government failed to meet the aforesaid legitimate demand of the employees of RRBs. Finding no other alternative remedy the employees Association preferred a Writ Petition on behalf of the All India Gramin Bank Association and All India Regional Bank Employees Association praying for striking down the Section 17 of the RRBs Act,1976 which is ultra vires to the Constitution of India, and a writ in the nature of mandamus be issued directing the Union of India to fix the emoluments of Regional Rural Bank Employees in conformity with the judicial maxim of "equal pay for equal work" and "industry-cum-region formula" and for bringing about parity in emoluments between the employees of RRBs inter se and employees of the Nationalized Commercial Banks. The Hon'ble Supreme Court while adjudicating on the said Writ Petitions agreed to appoint a National Tribunal to decide the question relating to pay, salary, other allowances and other benefits payable to the employees of RRBs. Then the Hon'ble Supreme Court of India left all the contentions open and directed the Central Government to refer the dispute to the Tribunal, preferably to a retired Chief Justice of a High Court. In terms of the aforesaid order of the Supreme Court the Central Government appointed Justice S. Obul Reddy, retired Chief Justice of the High Court of Andhra Pradesh as Chairman of National Industrial Tribunal and referred the dispute to the said Tribunal which after adjudication passed an Award on 30.04.1990 holding that there should be parity in regard to the wages payable to the National Bank Employees and the Rural Bank employees in the equal nature of jobs performed by the employees of the Rural Banks vis-à-vis the sponsored Banks as equal pay and other benefits as are admissible to regularly appointed full time messenger in the respective RRBs; and the management can not extract full time work and even beyond the working hours from the so called part time messengers merely showing them

the acquaintance rolls as part time employees paid on either daily wages or some other basis or on some proportionate basis; their services shall be regularized with effect from the date of their continuous engagement.

Pursuant to the observation made by the National Industrial Tribunal, the Government of India appointed a Committee called Equation Committee to examine the issue pertaining to the equation of posts in RRBs and sponsored Bank and a consequential fixation of pay and allowances and other benefits. The Equation Committee submitted its report to the Central Government which by an order dated 22.02.1991 accepted the award of the Tribunal and recommendation of the Equation Committee and directed all the RRBs to implement the National Industrial Tribunal Award and recommendation of the Equation Committee at the earliest. The Government of India also in its communication dated 22.2.1991 directed the Chairman of the RRB to consider the case of each part time employee of RRBs on merits and to decide whether such employees performed part time and full time work in the bank and to determine their fitment accordingly. Pursuant to the said decision of the Central Government , the NABARD constituted a working group under the Chief General Manager, NABARD which submitted its report to the Central Government recommending to identify such of those employees used on full time basis though employed on part time basis for regularizing their services by the concerned RRBs. It is observed that only those Sweepers and Messengers on part time post to work and actually used on full time basis, will have to be paid full time wages and determination and identification of such employees required to be made by the concerned Chairman of the RRBs. It is also recommended by the working group that the Chairman of the respective group has to get the exercise completed within a maximum period of six months from the date of acceptance of the report by the Central Government. Ultimately the report of the working group dated 17.02.1992 was accepted by the Central Government with certain modification and also directed the RRBs to implement the recommendation of the Working Group.

The Employees Association mentioned that the pay scale of the Messenger-cum-Peons was revised making it at par with their counterpart in the sponsored bank with effect from 01.09.1987, but while doing so the formula of fitment has been ignored without taking into consideration the initial date of appointment of the Messenger-Cum-Peons (MCPs). It was the objective of the NIT that the MCPs who have completed 5 years or more of service will be placed at least at the 2nd stage of the new scale, i.e. the scale pertaining to the similar post of the sponsoring bank; and that those who have completed 10 years or more of service will be placed at the third stage of the new pay scale but the said direction has been flouted and disobeyed causing financial losses to the MCPs who were eligible to the benefit of fitment at the 2nd and 3rd stage of computation of years is to be made from the initial date of engagement as MCPs. Due to ignoring of the length of service from the date of initial engagement as MCPs there has been denial of financial benefit to the MCPs working in Tripura Gramin Bank, the very idea of the fitment of the 2nd and 3rd stage of pay scale had been mooted and executed to stave off financial loss and also to ensure the benefit earned in the previous scale by dint of length of service did not get diluted. The workmen further mentioned that there is a group of MCPs who were engaged before 01.09.1987 and they were absorbed as MCP with regular pay scale as per NIT award and those MCPs became entitled to be fitted in the first stage of the regular scale of pay w.e.f 01.09.1987 but they were given benefit of fitment at the first stage of regular scale of pay with effect from 01.09.1987 and as a result they suffered financial loss and disadvantage. The Association added that the Management of Tripura Gramin Bank has flouted the order of NIT dated 01.09.1987 in as much as they have decided to follow the NABARD Circular dated 20.03.1993 whereby it was decided by the Management of Tripura Gramin Bank that fitment of the MCP as per the aforesaid award counting their services from the date of their initial engagement/ appointment as D.R.W/part time workmen can not be considered. The Association mentioned that such kind of illegality was committed in the case of Neelachal Gramya Bank, Puri, Odissa and the said illegality was challenged by the Puri Gramya Bank Workers's Union before the Orissa High Court which allowed and held that MCPs are entitled to regularize from the date of initial appointment with arrear of salary, and the said decision of the Hon'ble Orissa High Court was challenged by the Management before the Hon'ble Supreme Court which was dismissed.

The Association further stated that altogether 47 Messenger-cum-Peons have been denied the benefit of the award of the National Industrial Tribunal and the recommendation of the Equation Committee. In support of their contention the Association has enclosed a detail list of the MCPs who were appointed on 01.09.1987 and are entitled to fitment in the 1st, 2nd and 3rd stage. It is contended by the Association that the method of computation of length of service adopted by the Tripura Gramin Bank was in violation of NIT award dated 30.4.1990 which clearly stated that those staff who have completed 5 years or more as MCPs and those who have completed 5 years or more and 10 years or more in service would be eligible for fitment in the 2nd and 3rd stage respectively. It is also added that apart from the violation of the Rules by the Management of Tripura Gramin Bank as mentioned above another group of Messenger who were employed before 1.9.1987 were engaged as Messenger as per NIT award dated 30.4.90 were fitted in the 1st stage of the regular pay w.e.f. 01.09.1989 without taking into account their date of appointment which has caused great financial

loss. The Association has drawn the attention of the Tripura Gramin Bank Management to the gross anomalies regarding fitment of the MCPs vis-à-vis the award of NIT dated 30.4.90 but the Management inspite of repeated prayers and meetings and assurances given to the Association, has only been hoodwinking the Association members. Hence, the Association prayed for passing appropriate order granting relief and compensation to the employees of the Tripura Gramin Bank.

4. The case of the Management of Tripura Gramin Bank, Tripura in brief, is that the Rural Banks were constituted by a statute called Regional Rural Bank Act, 1976 and by virtue of this Act different Rural Banks were constituted for the Banking operation in Rural Sector with a view to render adequate financial aid in the agricultural sector and other allied purposes and the Rural Banks were managed by the sponsor Banks. The Section 17 of the said Bank provides that Central Government shall determine the salary payable to the Rural Banks employees from time to time, and as a result, two categories of salary were introduced. The Commercial Banks employees are entitled to their salary fixed by settlement arrived at from time to time while Rural Bank employees were getting their salaries in terms of the Notification issued by the Central Government and their salaries were fixed in consonance with the salary of the different State Government Employees for which the salary of the Rural Bank Employees for making uniform through out the country. Upon raising demand Rural Banks that since they are performing same and similar nature of job to that of the sponsored Bank, but the Central Government declined to their demand. Then the employees of the Rural Banks approached the Hon'ble Apex Court by a Writ Application assailing the provision contained u/s 17 of the aforesaid Act with regard to the fixation of the salary. During pendency of the said Writ proceeding, the Central Government agreed to constitute a National Tribunal to examine the cause espoused by the employees of the Rural Banks through their Writ Applications before the Hon'ble Apex Court which passed an order dated 01.09.1987 to constitute a National Industrial Tribunal. Accordingly a National Industrial Tribunal was constituted. The Tribunal after appreciation of evidence vide Award dated 30.04.1990 came to the conclusion that there should be parity in regard to the wage payable to the National Banks employees and the Rural Banks employees for equal nature of job performed by the employees of the Rural Banks vis-à-vis the sponsored Banks; and that till 01.09.1987 the Rural Banks employees are entitled to have their scale of pay keeping parity with the scale of pay of the concerned State Government employees as determined by the Central Government; and after 01.09.1987 the Rural Banks employees are entitled to have their scale of pay keeping parity with the scale of pay of the employees of the sponsored Banks and the same shall be determined by the Central Government in exercise of the powers conferred under Section 17 of the Act. It was also held by the National Industrial Tribunal that the question of equation of post and consequence of fixation of new scale of pay, allowances and other benefits should be decided by the Central Government. Pursuant to the Award passed by the National Industrial Tribunal the Government of India constituted an Equation Committee under the Chairmanship of Sri P.Kotaiah, Managing Director, NABARD with four others. Accordingly Equation Committee determined the post in Regional Rural Banks and the corresponding posts of sponsored Banks for the purpose of fixation of salary in terms of the Award.

The Management stated that from the award passed by the National Industrial Tribunal it reveals that for the purpose of fixation of scale of pay of the employees of Rural Bank including their fitment in the scale of pay of the sponsored Bank shall be reckoned from 01.09.1987 and it can not be computed for the purpose of fixation of pay scale and corresponding fitment benefit with reference to a date prior to 01.09.1987. Thus for all other purposes including the purpose of fixation of scale of pay with allied fitment benefits vis-à-vis regularization, if so required, shall be computed from the date of regularization in the Rural Bank. The Management averred that the contention of the Union in the instant reference is that while fixing of pay of the Rural Banks employees as on 01.09.1987 keeping parity with the employees of the sponsored Bank, fitment of pay should be made with reference to the initial engagement of the concerned employees of the Rural Bank. The Management also mentioned that since keeping the parity of scale of pay of the Rural Bank employees with concerned sponsored Banks employees was to take effect from 01.09.1987, the question of awarding fitment prior to that date does not arise at all. It is further stated by the Management that in the instant case 47 messengers were engaged and regularized in the service prior to 22.02.1991 and they were drawing scale of pay of the State Government as applicable in this Rural Bank and their pay was fitted into the sale of pay of sponsored Bank as on 01.09.1987 at par with the Notification dated 22.2.1991 issued by the Central Government. Accordingly the Management of Tripura Gramin Bank implemented the Award of the National Industrial Tribunal dated 30.04.1990 and the recommendation of the Equation Committee in line with the Government of India's Circular dated22.02.1991 and NABARD's Circular dated 20.03.1993. Therefore the claim of the Union in regard to fitment of pay of 47 messenger-cum-peon counting their services from the date of their initial engagement is only figment of their imagination and not borne out of any record. Hence, the Management prayed for passing an award holding that the fixation of salary of 47 messenger-cum-peon should be with effect from respective date of regularization as borne by the Management as per Government's circular dated 22.02.1991.

5. The Association did not adduce any evidence, while the Management examined their solitary witness Mr. I.K.Dandapat, the General Manager of Tripura Gramin Bank, who was examined ex-parte. I have gone through the evidence of MW.1 along with documents submitted by both the parties.

According to the Management witness No.1, the RRBs were constituted by a Statute called Regional Rural Bank Act,1976 and in order to operate those Banks a Statutory Scheme was formulated whereby RRBs were managed by Commercial Banks/Cooperative Banks called as sponsored Banks. The United Bank of India is the sponsor of Tripura Gramin Bank, and as per the RRB Act,1976, the RRB employees will get salary at par with the scale of respective State Government employees of comparable level and status where it operates. In due course the RRB employees made a demand to the Central Government to the effect that they are to be paid equal salary at par with the employees to the satisfaction for performing the same and similar nature of job to that of sponsored banks. On being refused by the Central Government who accepted the demand of the employees, the RRB employees approached the Hon'ble Supreme Court by filing Writ Petition No. being W.P.7149/1982 and 132/1982 demanding equal pay for equal work. The Hon'ble Supreme Court vide its order dated 1.9.87 held that a National Industrial Tribunal to be constituted which with due appreciation of evidence will examine the matter for the purpose. Accordingly the issue was examined by National Industrial Tribunal presided over by the Hon'ble Chief Justice Mr. S.Obul Reddy (Retd.) as Presiding Officer, and passed an order dated 30.4.1990 holding that the employees of RRBs would be entitled to the salaries, etc. and other benefits which were enjoyed by the State Government employees and other RRBs vis-à-vis sponsored Banks upto 31.8.87 and from 1.9.87 they would be entitled to the pay scale of the employees of the sponsored banks in their respective jobs. The Hon'ble National Industrial Tribunal also observed that the RRB employees are entitled to have their pay scale keeping parity with the scale of pay of the employees of the sponsored bank and the same shall be determined by the Central Government in exercise of power conferred u/s 17 of the I.D.Act; and that the question of equation of post and consequence of fixation of new scale of pay, allowances and other benefits should be decided by the Central Government. In pursuance of the Award of the NIT the Central Government constituted an Equation Committee under the Chairmanship of Sri P.Kotaiah, the Chief General Manager of NABARD with four other members. The Equation Committee submitted its report vide Exhibit-B which was accepted by the Government of India and notified on 22.2.91 directing RRBs throughout the India to implement the said report vide Exhibit-C.

The Management witness also stated that as per the report of the Equation Committee the scale of pay of different posts of Tripura Gramin Banks would be equated and fitted with the post and scale of pay of the sponsored Bank i.e. United Bank of India with effect from 1.9.87; and the bank employees are entitled to have their pay scale in terms of different bipartite settlement arrived from time to time. Accordingly the effect of 5th Bipartite Settlement was extended to the employees of Tripura Gramin Bank with effect from 1.11.1987. He also added that altogether 47 numbers of messengers involved in this reference were engaged and regularized prior to 22.2.1991 and finally drawing scale of pay of State Government as applicable; and their pay, allowances and other benefits were fitted into those of the sponsored bank as on 1.9.87 vide Exhibit-D. The said 47 numbers of messengers were regularized from 26.12.86 to 20.10.89. The MW.1 has proved the documents vide Exhibit-E to R which are the orders of regularization in respect of 14 numbers of employees of Tripura Gramin Bank. The Union raised demands for due fitment with effect from the initial date of engagement, which is not tenable and legal as all the employees were engaged initially on daily wage basis/part time basis and the payments were made through vouchers. The MW.1 further stated that as per the guidelines of NABARD dated 20.3.93 marked as Exhibit-S regularization would mean providing a regular pay scale to an employee who would be entitled to increment annually. The RRB in normal course was required to maintain the records and the acquaintance roll for their messenger and part time employees; and that the employees in sub-staff cadre who were in service of the RRB on 22.2.91 and who have completed 240 days of continuous service after that date may be treated as regular employee of the RRB with effect from 22.2.91; and that the cases in respect of the employees already been settled/ regularized by the authorized bank officers and the said employees are drawing pay scale at the pay corresponding to the employees of the United Bank of India as such, the fitment made in respect of the instant 47 employees is legal and justified, proper and according to the guidelines and instruction given by the Government of India and the Award passed by the Hon'ble National Industrial Tribunal.

6. I have perused the entire case record along with the pleading of both the sides & the evidence adduced by the Management. The para4.424,4.427 & 4.428 of the Award of the National Industrial Tribunal headed by Mr. S.Obel Reddy, Hon'ble Chief Justice (Retd.) runs as under:

> "4.424. …….The duties of Officers and other employees in a banking industry are absolutely dissimilar and different from the duties of Officers or other employees on the executive side of the Government. Similarly, the duties of employees in a steel industry or aviation, medical and health, engineering and so on, require special qualifications and training. To equate employees in those professions or avocations with the employees in the Secretariat or any Department of Government

where there could be no semblance of similarity of functions and duties, would be ludicrous. It is well to remember that the pay scales in a Government establishment are not determined having regard to the comparable status and level of employees in a steel industry, petroleum industry, Indian Airlines etc., That would be absolutely illogical and irrational. The crux of the matter is that for comparison, it must stand the test of reasonableness when scrutinized in the light of identity or similarities in the nature of duties and functions…… The only comparable posts are in the commercial banks and it is not denied that the employees in a rural branch of commercial banks are of comparable level having regard to the commonalities in their duties and functions. There is any amount of justification in the demand of the Writ Petitioners that they ought to have been equated to comparable posts in commercial banks and their salary structure should have been so related as to be in conformity with the salary structure in the nationalized banks……."

In para 4.425 – It was decided by the National Industrial Tribunal that what flows from its findings that the officers and other employees of RRBs will be entitled to claim parity with the Officers and other employees of the Sponsor Banks in the matter of pay scales, allowances and other benefits.

The Hon'ble National Industrial Tribunal in para 4.427 and 4.428 has made clear regarding the elimination of anomalies & to uniformity in the pay scale etc. In the para 4.427 it is mentioned that having regard to the above, in order to eliminate the anomalies and bring about uniformity in the pay scales in all the RRBs at least to the extent of each State, I find that they will be entitled to all the allowances, benefits which the State Government servants of comparable level and status are entitled to. They will, therefore, be only entitled to claim the difference in allowances and other benefits, so as to bring about uniformity with the State Government employees in all matters of pay scales, allowances, benefits etc., till 31st day of August, 1987.

Para 4.428 speaks as follows :

" So far as the equation of posts and the consequent fixation of the new scales of pay allowances and other benefits for Officers and other employees of the RRBs on par with the Officers and other employees of comparable level in corresponding posts in sponsor banks and their fitment into the new scales of pay as are applicable to Officers of sponsor banks in corresponding posts of comparable level, it is a matter which has to be decided by the Central Government in consultation with such authorities as it may consider necessary. This will also include the pay scales, benefits, other allowances and fitment of sub-staff of the RRBs with the sub-staff of sponsor banks. This Award is accordingly passed and it shall cover all the existing RRBs. The Award shall be given effect to from 01st day of Septemeber,1987."

Thus it is clear that the Hon'ble National Industrial Tribunal has been pleased to allow the RRB employees the pay scale and other benefits at par with those of the sponsored Banks with effect from 1.9.87 and that the question of equation of post and consequent fixation of new scale of pay and other benefit of the RRBs and their fitment into the new scale of pay is to be decided by the Central Government in consultation with the appropriate authorities. Accordingly the Central Government vide its No. 2775 dated 5.10.1990 constituted an Equation Committee under the Chairmanship of Sri P. Kotaiah, M.D, NABARD with four other members and the said Committee submitted its report before the Government of India on 8.1.1991 vide Exhibit-B, the report of Equation Committee was accepted by the Government of India vide order dated 22.2.1991 proved as Exhibit-C.

7. The present dispute is relating to fitment of pay scales and allowances of the employees of the RRB i.e. Tripura Gramin Bank. The Management both in their pleadings as well as the evidence as mentioned above has clearly stated that they have regularized the service of the 47 numbers of messenger-cum-peon involving in this reference from the period with effect from 26.12.86 to 20.10.89 and their fitment has already been made as shown in the statement produced by the Management vide Exhibit-D. While the Association in their pleading pointed that the pay scale of the messenger-cum-peon was revised making it at par with the counter part in the sponsored bank but while doing so the Management have ignored the formula of fitment and the initial date of appointment of the messenger-cum-peon in as much as it was clear direction of the National Industrial Tribunal that their services should be regularized with effect from the date of the continuous appointment. It is also pleaded by the Association that the Award of the National Industrial Tribunal is clear that who have completed 5 years or more of services will be placed at least at the second stage of new scale i.e. the scale pertaining to the similar post of the sponsored bank, and those who have completed 10 years or more of services will be placed at the 3rd stage of the new pay scale. But the said direction has not been complied with the by the Management. It is also alleged by the Association that a group of messenger-cum-peon were engaged before 1.9.87 and they were regularized as per NIT Award and those MCPs became entitled to be fitted in the first stage of regular pay of scale with effect from 1.9.87 but they were given benefit of fitment at the first stage of regular scale of pay with effect from 1.9.89 and consequently they suffer loss and disadvantages. It is

also mentioned by the Association in their pleading that some of the messenger-cum-peon appointed on 1.9.87 and some are eligible for fitment in the second stage and thereby the Management of Tripura Gramin Bank deprived the benefit of the messenger-cum-Peon accorded with the regular scale of pay for not being provided fitment protection with effect from 1.9.87.

The report of the Equation Committee of RRBs dated 18.1.91 dealt with the fitment by way of protection of pay + D.A. in para-4.12 to para 4.15 which runs as under :-

> 4.12. Whenever employees of different organizations having different pay packages have been brought under a standard and uniform package, the fitment has been given only on the basis of protection of pay or emoluments and not on stage to stage basis. The procedure followed in such cases is to give equation fitment in the standard scales of pay in such a manner that the emoluments in the standard pay package work out to be equal or slightly higher than what was actually drawn.
>
> 4.13. In the Banking Industry, the latest example of this nature is, standardization of pay scales for Officers of Nationalised Banks in 1979, based on Pillai Committee Recommendations, where fitment was given to Officer from different banks placed in heterogenous scales of pay into a standard scales on Pay + DA protection basis. The Committee, therefore, considers it appropriate to recommend fitment on the basis of protection of Pay + DA drawn (i.e. Basic Pay, Dearness Pay, DA, Ad-hoc or Additional DA, Interim relief or any such allowance which forms part of Pay or DA).
>
> 4.14. In any formula, it is not feasible to ensure that the employees in different organizations equal in all respects are fitted at the same stage in the new scales of pay drawing the same total Pay+DA. This however ought to be ensured amongst employees drawing equal basis pay in the same cadre in the same organization.
>
> 4.15. If two employees in the same cadre and organization draw same basis pay but different allowances on the appointed date, they should be placed at the same stage in the new scales of pay and where there is difference of stages, between the two, that difference should be broadly reflected in the fitment into new scales of pay. This can be ensured if only those components are taken into account which are common for all employee and not linked to the place of posting and type of posting. Only the basic Pay and Dearness Allowances have such characteristics.

In para 4.12 of the Equation Committee report it is clearly mentioned that the fitment has been given only on the basis of protection of Pay or emoluments and not to stage to stage basis; and the procedure followed in such cases is to give equation fitment as per pay scale in such a manner that the emoluments in the standard pay packages work out to be equal or slightly higher than what was actually drawn. It is also recommended by the Committee that the fitment is to be made on the basis of protection of Pay + DA drawn (i.e. Basic Pay, Dearness Pay, DA, Ad-hoc or Additional DA, Interim relief or any such allowance which forms part of Pay or DA).

The pleadings of the Management in their W.S. and the evidence of the MW.1 shows that the RRB in normal course is required to maintain records and Acquaintance Roll for their messenger and part time employees, and the employees in the sub-staff cadre who were in service of Regional Bank on 22.2.91 (the date on which the Government of India has notified the acceptance of NIT Award) and who have completed 240 days of continuous service after that date they may be treated as regular employees of RRBs with effect from 22.2.91. It is also categorically mentioned by the Management witness No.1 that they have already regularized all the 47 numbers of employees involved in this case within the period of 1986 to 1989 and they are now drawing the pay scale as Pay scale corresponding to the employees of the United Bank of India, and thus the fitment made in respect of the said 47 numbers employees is legal and justified according to the guidelines as well as instruction given by the Government of India and the Award passed by the NIT. In support of their contention the list of messengers produced by the Management witness vide Exhibit-D, which shows that some of the workers were engaged prior to 1.9.87 but they were shown in the column "date of service regularized" with effect from the date shown against each of the worker and the engagement letter issued against the said 47 workers after 30.6.82 and also they were regularized on subsequent dates.

In the Award passed by the National Industrial Tribunal in para 4.410, it has been stated as :-

> "In view of the authoritative pronouncements of the Supreme Court, it must be held that the part-time sweepers-cum-messengers who were employed on daily wages or on half of the salary or on some other proportion of the salary of a regular messenger, will be entitled to their various claims such as equal pay and all other attendant benefits as are admissible to regularly appointed full time messengers in the respective RRBs. That there was/is no sanctioned post of a regular messenger in a branch or the head office is absolutely irrelevant and immaterial in view of the proved facts that the so called part-time messengers whether on daily wages or on some other basis were made to work full time by their respective managements. The Managements cannot extract full

time work and even beyond the working hours from the socalled part-time messengers by merely showing them in the acquittance rolls as part-time employees paid on either daily wages; or some other basis; or on some proportionate basis. Their services shall be regularized with effect from the date of their continuous engagement. If deemed necessary it will be open to the Government of the RRBs as the case may be, to sanction the required number of posts to accommodate the writ petitioners and all those belonging to their class.

8. In the instant reference although the Association contended that some of the messengers-cum-Peons have been working since 21.12.76 onward, their fitment should be made treating them as regular employees. But the Association have not been able to produce any evidence to the effect that the said messengers-cum-peons have been engaged part time basis and worked regularly or on daily wages or on some other basis were made to work full time by their management merely showing them in the acquittance roll as part time employees, as claimed by them. In such a situation I find no rason to entertain the grievances of the Association. The Association also failed to establish their plea taken in their claim statement adducing supporting evidence.

9. In view of my above discussion I am of the opinion that the Tripura Gramin Bank Employees Association have not been able to prove their case. In the result, it can safely be held that the action of the Management of Tripura Gramin Bank, Agartala in denying fitment of Pay regarding 47 messengers-cum-Peon as per National Industrial Tribunal Award counting their services from the date of initial engagement/appointment as daily rates worker/part time workers is legal. Accordingly this reference is decided in affirmative.

Given under my hand and seal of this Court on this 31st day of March,2014, at Guwahati.

Send the Award to the Ministry as per procedure.

SHRI L.C. DEY, Presiding Officer

नई दिल्ली, 2 मई, 2014

का.आ. 1421.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्पोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 63/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/175/97-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd May, 2014

S.O. 1421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 63/98) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Corporation Bank, and their workman, received by the Central Government on 31/03/2014

[No. L-12012/175/97-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI 110 032

Present :—Shri HARBANSH KUMAR SAXENA

ID No. 63/98

Sh. Rajinder Kumar Mawal

Versus

Corporation Bank.

AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/175/97-IR(B-I)) dated 04.02.98 referred the following Industrial Dispute to this tribunal for adjudication :-

"Whether the action of the management of Corporation Bank in awarding punishment of dismissal from bank's services imposed on Shri Rajinder Kumar Mawal, Typist-cum-Clerk vide orders dated 07.05.1996 is just and legal? If not, to what relief the workman is entitled?"

On 17/3/98 reference was received in this tribunal. Which was register as I.D No.63/98 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Workman on 20/3/1998 filed claim statement in detail.

On the basis of grounds mentioned in claim petition he prayed that this order dated 7.5.1996 passed by the Disciplinary Authority and order dated 6.9.96 passed by the Appellate Authority may be declared illegal, wrongful and against the principles of natural justice, fair play and enquiry by reinstating the workman to his post of Typist - cum-Clerk with benefit of full back wages, continuity of service and attendant benefits.

Management in reply to claim statement filed its written statement on 28.12.1998 .

On the basis of averments made in W.S. Management prayed as follows:-

As regards the punishment of dismissal imposed on the workman, as averred by him at Para 20, it is submitted that the charge established against him are serious, warranting the punishment of dismissal from the service. There are no extenuating/mitigating circumstances to take a lenient view in order to interfere with the punishment imposed.

With reference to the prayer, it is submitted that the claim of the workman deserves to be rejected. It is accordingly prayed that the same be rejected.

Management on 26.3.2001 again filed Written Statement. Wherein it mentioned as follows:-

1. It is submitted that the management had issued a Chargesheet dated 20.5.1995 to the workman. The charges leveled against the workman were that, that the workman with the ulterior motive encashed the Banker's Cheque of Rs. 2.00 lacs prompted and assisted by one Sh. Sunil Kumar Srivas to open a Savings Bank Account in the name of the payee of the cheque, allotted S.B A/c No.3383 thereto without placing the relevant documents before the branch officials for verification, and authorization to open the account, and accepted cheque for Rs.2.00 lacs to the credit of the said account. The said actions were tantamount to doing acts prejudicial to the interest of the Bank/gross negligence or negligence involving or likely to involve the bank in a serious loss, gross mis-conduct under Clause 19.5(j) of the Bipartite Settlement applicable to the workman, besides amounting to moral turpitude in him.

2. The workman in response to the above charges wrote a letter dated 26.6.1995 denying all he charges against him. Thereafter, Enquiry Officer was appointed on 13.7.1995.

3. The workman was provided with the copy of the management documents alongwith the chargesheet before the Preliminary hearing. An additional documents relied on by the management was also furnished to the workman before the preliminary hearing. The workman participated in the domestic inquiry from the very first hearing and was represented by Defence Representative of his choice.

4. That Preliminary hearing of the inquiry was held on 7.8.1995. On that date, the workman alongwith his representative were present and the proceedings recorded were duly signed by the workman as well as his representative. The said proceedings state as under:

"the CSO is allowed one day time to verify the documents proposed to be relied upon by the management and he is granted time till 21.8.1995 to submit his list of witness and documents if any".

5. The workman never raised any objection that the documents relied upon by the Management were not given to him at the Preliminary hearing or at any other stage. The proceedings dated 12.9.1995,13.9.1995 and other proceedings were also participated in by the workman alongwith his defence representative and the same were duly signed.

6. The workman at no stage ever raised any objection whether in writing or oral or in any kind of letter to the management that the documents relied upon by the management were not given to the workman.

7. The Preliminary Investigation which was held before issuing the Chargesheet was administrative in nature with a view to find out whether there were sufficient grounds to initiate Disciplinary proceedings. There was no legal requirement to associate the workman with the Preliminary investigation. However, when the Management decided to issue a chargesheet alsongwith the chargesheet, the Management supplied a complete copy of investigation report alongwith its enclosures to the workman to put forward his defence.

8. Two witnesses Sh. Sunil Kumar Srivas and Prasant Kumar Jain could not be examined due to the circumstances beyond the control of the management. The management made its best efforts to procure their presence. However, since they did not come forward to appear as witnesses, there was nothing illegal or wrong if the said witnesses were dropped.

9. It is submitted that the Inquiry Report dated 16.1.1996 was forwarded to the workman alongwith the Provisional Order (proceedings) dated 7.3.1996. The allegation that the said report was supplied only one day before the date of hearing before the Disciplinary Authority is false.

10. It is submitted that the claim made by the workman states as under:

"Although the communication dated 7.3.96 did mention that the report of the Enquiry Officer is being enclosed, but no such report was enclosed with the communication, which was supplied to the undersigned workman and which report was supplied to the undersigned workman only a day before he was to appear before the Disciplinary Authority alongwith the written statement at the time of personal hearing on 22.3.1996"

The actual position is that the workman was supplied inquiry report alongwith the provisional order dated 7.3.1996. The allegation that inquiry report was not supplied alongwith provisional order is denied. Moreover, the hearing i.e. dated 22.3.96 one day before which the workman has claimed to have received the inquiry report is concocted date as there was no such hearing on that date. The hearing was held on 20.4.1996. On that day, the workman submitted a letter. That letter did not make any grievance regarding non supply of inquiry report or late supply thereof infact the letter challenged the findings of the Enquiry Officer which could not have been done without the receipt of the inquiry report. The said letter is Annexure R-1 to reply of the management.

11. The workman has made an objection to the effect that the Bank had not notified the appointment of Disciplinary Authority and Enquiry Officer. The same is baseless, as the Bank vide Circular No. HRD: 1854:84 dated 22.10.1984 had notified that the Officer in Senior Management Grade Scale IV would be the Disciplinary Authority in respect of employees of the Bank in Clerical and Subordinate Staff cadre. In the instant case the Chargesheet and Order were issued by the Chief Manager who is an Executive in Senior Management Grade Scale IV. Therefore, the action of the Chief Manager as Disciplinary Authority in issuing the Chargesheeet /Order in domestic inquiry and appointing the Presiding Officer is proper and valid.

12. It is submitted that the copy of the statement of witnesses Sh. Sunil Kumar Srivas, Mrs. Baddi and Mr. Prashant Kumar Jain which were annexures to Investigation Report and the said report was forwarded to the workman alongwith the Chargesheet dated 20.5.1995.

13. In the domestic inquiry which has Quasi Judicial procedure, enforcement of outside witness is often rendered difficult. The Management made all possible efforts to produce the two outside witnesses i.e. Sh. Sunil Kumar Srivas and Mr. Prashant Kumar Jain but were not successful in their efforts. The statements earlier recorded have not been disputed by the workman and were corroborated by the then Branch Manager Jabalpur. The statement of Smt. Baddi on the other hand was confirmed by her during the inquiry and marked as Exh. M-14.

14. The claim filed by the workman is denied in its totality and also the Affidavit by way of evidence is also denied. The allegation made by the workman that the Enquiry Officer was biased against the workman is wrong and denied. The workman in his claim referred to the stage of questioning by the Enquiry Officer. It is the settled position of law that where the workman has not got himself examined as a witness, the Enquiry Officer is right in questioning the workman at the incriminating circumstances appearing against him, which also provide yet another opportunity to the workman either to rebut or clarify the incriminating evidence appearing against him. Such a questioning by the Enquiry Officer cannot be alleged as illegal.

15. It is submitted that the charges established against the workman are serious, warranting punishment of dismissal from services. There was no extenuating mitigating circumstances to take lenient view in order to interfere with the punishment imposed on the workman.

16. It is submitted that preliminary inquiry was valid, proper and preliminary issue be decided in favour of the Management.

Workman/Claimant filed rejoinder in reply of Written Statement on 7.1.1999. Wherein he stated as follows:-

1-3 Paras No.1 to 3 of the preliminary submissions are wrong as stated and hence same are denied. In reply it is submitted that the enquiry conducted without following the principle of natural justice and without afforded the reasonable opportunity to the workman to cross-examine the prosecution witnesses and the enquiry officer conducted the inquiry in biased manner. It is submitted that the reply in the present case filed by the Regional office Delhi who is the management in the present case and whose offices is situated in Delhi and therefore this Hon'ble Tribunal have a territorial jurisdiction to decide the issue.

Reply to Parawise Reply

Before starting the reply of the Counter it is relevant to submit here that the management not supplied the annexures of their reply which are stated in the reply as R-1, R-2 etc.

1. Para No. 1 of the Reply is wrong as stated and hence same is denied. In reply it is submitted that the workman not committed any misconduct and alleged charge-sheet is a vague charge sheet which not discloses any charge on the workman. Para No.1 of the claim statement is correct and same is reiterated here again.

2 &3 Para No. 2 & 3 of the reply of the Management are wrong as stated and hence same are denied. In reply it is submitted that the management without considering the case / representation against the charge sheet the management appointment the Enquiry officer of their choice who has conducted the enquiry in biased manner. Para No.2 & 3 of the claim statement is correct and the same is reiterated here again.

4-6 Para No. 4 to 6 of the reply of the Management are wrong as stated and hence same are denied. In reply it is submitted that the applicant was not supplied with the copy of the relied documents and the copy of the statement of witnesses and the copy of the preliminary enquiry report, which is illegal in the eyes of law and against the principle of natural justice. It is submitted that the Management without any reason rejected the demand of the applicant for additional documents. It is further relevant to submit here that in the present case Sh. Sunil Kumar Srivas and Sh. Prasant Kumar Jain were only the key witnesses for establishing the charges leveled against the workman but same were not produced before the enquiry officer, which is illegal in the eyes of principle laid down by Supreme Court in the case of Brielly Electric Supply Co. Ltd. Vs Workmen 1971(2) SCC 617 has held as follows:-

"No materials can be relied upon to established a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be uses."

It is further relevant to mention here that, it is well settle principle of law that failure to examine single witness on whose testimony entire case rests, vitiates whole enquiry as laid down in the case P.N. Mukharjee Vs. Union of India reported in 225 Swamy's case law Digest 1993 page No. 346 and in the present case the main witnesses Sh. Sunil Kumar Srivas and Sh. Prashant Kumar Jain who could testify to the effect that the workman played any role in opening of the account. Paras No.4 to 6 of the claim statement are correct and same are reiterated here again.

7. Para 7 needs no reply.

8-9. Para No.8 of the reply is wrong as stated and hence same is denied. In reply it is submitted that the workman was not supplied the copy of the Enquiry Officer Report before passing the provisional orders of the disciplinary authority dated 7.3.1996 as well as alongwith the provisional order dated 7.3.1996 and non-supplying the Enquiry Officer report before passing the final order is illegal in the eyes of law. Para No.8 of the claim statement is correct and same is reiterated here again.

9-10. Para No. 9 & 10 of the reply are wrong as stated and hence same are denied. In reply it is submitted that the disciplinary authority as well as appellate authority not applied their mind before passing the orders and they reproduced the observation of Enquiry Officer in their orders, which are not speaking orders and therefore same are liable to be quashed. Para No. 9 & 10 of the claim statement are correct and same are reiterated here again.

11. Para No. 11 of the Counter is wrong as stated and same is denied. In reply it is submitted that the disciplinary authority passed the impunged dismissal order on the basis of past record, which was not the part of the Charge Sheet and which was not produced before the Enquiry Officer and therefore the impunged order of dismissal is illegal and parawise reply of the Grounds are as under:-

I to iv. Para No. i to iv of the reply are wrong as stated and hence same are denied. In reply it is submitted that the workman not committed any misconduct and therefore the impunged charge sheet is illegal and the charge sheet itself is a vague charge sheet. It is further relevant to submit here that the appointment of the Enquiry Officer and Presenting Officer were not proper invalid. It is submitted that the Enquiry Officer submitted his report on the basis of statement of Sunil Kumar Srivas and Mr. Jain which were recorded during the preliminary enquiry and in absence of the workman. Paras No. i to iv of the Claim Statement are correct and same re-iterated here again.

v to x. Para No. v to x of the reply are wrong and same are denied. In reply it is submitted that the Enquiry Officer examined the workman at length, which is illegal and against the principle of natural justice and against the well settle principle of law laid down by Hon'ble Supreme Court that one can not acted as a prosecution as well as judge. Paras no. v to x of the Claim Statement are correct and same are reitereated here again.

12-17. Para No. 12 to 17 of the reply are wrong as stated and hence same are denied. In reply it is submitted that each and every allegation in para 12 to 17 stated by the management is also denied. In reply it is submitted that the Enquiry Officer conducted the inquiry without adopting the rules and procedure and without following the principle of natural justice as well as without giving the reasonable opportunity to the workman and submitted his report in biased manner which is not sustainable in the eyes of law. Paras No. 12 to 17 of the Claim Statement are correct and some are reiterated here again.

18-20.Para No. 18 to 20 of the counter reply are wrong and hence are denied. Para No. 18 to 20 of the Claim statement are correct and some are reitereated here again.

It is therefore respectfully prayed that the Hob'ble Court may graciously be pleased to pass an order of allowing the claim of the workman.

On basis of pleadings of parties following issues has been framed by my Ld. Predecessor on 7/1/1999:-

1. Whether the domestic enquiry conducted against the workman is fair and proper?

2. As per the term? Reference ?

After framing the issues my Ld. Predecessors fixed 25.2.1999 for producing evidence by management on preliminary issue no. 1.

Management in support of its case filed affidavit of Sh. S.V.S Dattatreya on 16.7.1999. Wherein he stated as follows:-

1. I was appointed as inquiry officer in the above case to conduct domestic inquiry in the case of Sri Rajender Kumar Mewal, Typist –cum-Clerk, Faridabad Branch. I was appointed an inquiry officer in terms of para 19.14 of Biparitite settlement and my name as inquiry officer for Faridabad Branch for the said purpose was circulated to the staff of the branch. The C.S.O never objected to my appointment as the inquiry officer.

2. After being appointed as the inquiry officer in above case, I issued notice to both the Management and the workman. I gave them full opportunity to state their respective cases, file documents, adduce witnesses, and cross- examine each others witnesses. The inquiry was conducted by me in terms of the principles of natural justice. Copies of each days proceedings were given to the parties and their signatures were taken. Full opportunity of hearing was also given. Both parties submitted their written briefs.

3. After completing the inquiry and relying on the documents/statements of witnesses, I finally submitted the report to the management.

4. I am filing herewith the relevant documents / proceedings of the inquiry which be read as part and parcel of this affidavit:-

   (a) Charge sheet issued to Sh. R.K. Mawal vide letter no. PAD/IRW/DISC/1051/95 dated 20.5.1995 marked –Ex MW1/1.

   (b) Proceedings dated 07.8.95 marked – Ex. MW ½.

   (c) Statement of CSO dated 07.08.95- Ex. MW 1/3.

   (d) Order Sheet dated 12.9.95 and 13.9.95 marked –Ex. MW ¼.

   (e) Statement of MW1 marked-Ex. MW 1/5.

   (f) Statement of MW2 marked-Ex. MW 1/6.

   (g) Statement of MW3 marked-Ex. MW 1/7.

   (h) Statement of DW1 marked-Ex. MW 1/8.

   (i) Questioning of CSO by me marked- Ex. MW.1/9.

   (j) Proceedings of domestic enquiry dated 16.09.1996 submitted by the Enquiry Officer marked- Ex. MW 1/10.

Affidavit tendered on 29/5/2000. MW1 Sh. S.V.S Dattatreya was cross-examined by Ld.A/R for workman.

His examination-in-chief and cross-examination is as follows:-

Affidavit Ex. MW1 is correct. It may be read as part of my statement.

XXXXX

A preliminary enquiry was also held against the workman before issuing of the charge sheet. I do not know whether copy of the preliminary enquiry report was supplied to the workman or not. The copies of the listed documents were supplied to the workman. I had not cross –examined the witnesses of the management since I was Enquiry Officer. On his request the workman was given the Assistance of defence representative. The copies of the statement of the listed witnesses were supplied to the workman at the time of the charge sheet given to him. It is wrong to say that the Management witnesses were cross-examined by the workman. It is also wrong to say that only to fill up the gap I had cross-examined the management witnesses. We having our regional office at Delhi also. My affidavit filed in the case was drafted by an advocate. It is wrong to say that facts stated in my affidavit are wrong.

Workman in support of his case filed affidavit in his evidence wherein he stated as follows:-

1. That while working as clerk in Faridabad Branch of the corporation bank a charge sheet dt. 20.5.1995 was issued to me alleged that " with the malafide intention , in collusion with Sh. Sunil Kumar Srivas manipulated the opening of S/B.A/c No. 3383, in the name of Sh. Badri Prashad Srivas to encashment of the said cheque and attempted to defraud the Bank, which is totally wrong and the charge against me are totally wrong and vague.

2. That the charge sheet was based on the documentary as well as witnesses but the copies of relied upon documents and the statement of witness and the copy of the preliminary enquiry report were not supplied to me along with the charge sheet by which I was deprived to make an effective representation against the charge sheet.

3. That the charge sheet which was issued on the basis of five witnesses but only three witnesses were produced during the enquiry and two key witnesses were dropped and I was not given and reasonable opportunity to cross-examination of the witness.

4. That the Enquiry officer conducted the enquiry in biased manner without following the rules and principle of natural justice. And I was not given reasonable opportunity to produced my defence in proper way.

5. That I made special request for Additional documents during the enquiry but the same were not supplied to me without any reasons.

6. That dis missal order dt. 7.5.96 and the appellate order dt. 6.9.96 are illegal, passed without applying mind, against the rules, against the principle of natural justice.

7. That before passing the dismissal order dt. 7.5.96 and appellate order 6.9.96 , no personnal hearing was granted to me.

8. That my claim statement and the rejoinder filed in the above case may be treated as a part and parcel of this affidavit.

Affidavit tendered on 9.10.2000. WW1 Sh. Rajender Kumar Mawal was cross-examined by Ld.A/R for Management.

On 9.10.2000 his examination-in-chief and cross-examination is as follows:-

Affidavit Ex. WW1/1 is correct. It may be read as part of my statement.

XXXXX

It is correct that myself and my defence representative both had participated in the enquiry proceed-ings from its very beginning. No list of documents annexed to the charge sheet on the record of the case was given to me only charge sheet was given to me. In my reply to charge sheet I had denied the charges leveled against me. It is correct that on 7.8.95 at the time of preliminary enquiry myself and my defence representative were present and I had put my signatures on the proceedings of the enquiry . It is wrong to say that I was supplied the entire copies of the documents relied upon by the management and the preliminary investigation report before 7.8.95. In the enquiry proceeding dated 7.8.95 the observation of the enquiry officer that C.S.O. was allowed one day time to verify the documents proposed to be relied upon by the management and he has granted time till 21.8.95 to submit his list of witnesses and documents if any made therein is not correct. Myself and my representative both had signed on the said documents on the request of the management. I had given in writing to the enquiry officer for the supply of the copy of the documents relied upon by the management in my case. I do not remember that the said letter was given by me to the enquiry officer on 7.8.95 or prior to it in a proceeding of 12.9.95 and 13.9.95. I had signed on the proceedings on the request to the management the date of 22.3.96 before the disciplinary authority for hearing given in para 8 of my statement of claim is correct. It is wrong to say that no hearing on 22.3.96 before the disciplinary authority was not hold. I do not remember whether the hearing before the disciplinary authority was held on 22.4.96 or not. I am unable to say whether my letter date 20.04.96 annexed to the written statement an annexure R-1 was handed over by my representative personally to the disciplinary authority or not. In the said letter dated 25.4.96 it is not written that the copy of the enquiry report was not supplied to me. It is wrong to say that my affidavit is false. It is wrong to say that I was not given full opportunity during the domestic enquiry to defend my case as per rules.

WRITTEN SUBMISSION ON BEHALF OF THE MANAGEMENT IS AS FOLLOWS:-

1. It is submitted that the Management had issued a chargesheet dated 20.5.1995 to the workman. The Charges leveled against the workman were that, the workman with the ulterior motive encashed the Banker's Cheque of Rs. 2.00 lacs prompted and assisted one Shri. Sunil Kumar Srivas to open a Savings Bank Account in the name of the payee of the cheque, allotted S.B. A/c No. 3383 thereto without placing the relevant documents before the branch officials for verification, and authorization to open the account and accepted cheque for Rs. 2.00 lacs to the credit of the said account. The said actions were tantamount to doing acts prejudicial to the interest of the Bank/gross negligence or negligence involving or likely to involve the bank in a serious loss, gross mis-conduct under Clause 19.5(j) of the Bipartite Settlement applicable to the workman, besides amounting to moral turpitude in him.

2. The workman in response to the above charges wrote a letter dated 26.6.1995 denying all the charges against him. Thereafter, Enquiry Officer was appointed on 13.07.1995.

3. The workman was provided with the copy of the Management documents alongwith the Chargesheet before the Preliminary hearing. An additional document relied on by the management was also furnished to the workman before the Preliminary hearing. The workman participated in the domestic inquiry from the very first hearing and was represented by Defence Representative of his choice.

4. The Preliminary hearing of the inquiry was held on 7.8.1995. On that date, the workman alongwith his representatives were present and the proceedings recorded were duly signed by the workman as well as his representative. The said proceedings state as under:-

" The CSO is allowed one day time to verify the documents proposed to be relied upon by the Management and he is granted time till 21.8.1995 submit his list of witnesses and documents if any".

5. The workman never raised any objection that the documents relied upon by the Management were not given to him at the Preliminary hearing or at any

other later stage. The proceedings dated 12.09.1995, 13.9.1995 and other proceedings were also participated in by the workman alongwith his defence representative and the same were duly signed.

6. The workman at no stage ever raised any objection whether in writing or oral or in any kind of letter to the Management that the documents relied upon by the Management were not given to the workman.

7. The Preliminary Investigation which was held before issuing the Chargesheet was administrative in nature with a view to find out whether there were sufficient grounds to initiate Disciplinary proceedings. There was no legal requirement to associate the workman with the Preliminary investigation. However, when the Management decided to issue a chargesheet alongwith the chargesheet, the Management supplied a complete copy of investigation report alongwith its enclosures to the workman to put forward his defence.

8. Two witnesses Sh. Sunil Kumar Srivas and Prashant Kumar Jain could not be examined due to the circumstances beyond the control of the Management. The Management made its best efforts to procure their presence. However, since they did not come forward to appear as witnesses, there was nothing illegal or wrong if the said witnesses were dropped.

9. It is submitted that the Inquiry Report dated 16.1.1996 was forwarded to the workman alongwith the Provisional Order (proceedings) dated 7.3.96. The allegation that the said report was supplied only one day before the date of hearing before the Disciplinary Authority is false.

10. It is submitted that the claim made by the workman states as under:-

"Although the communication dated 7.3.96 did mention that the report of the Enquiry Officer is being enclosed, but no such report was enclosed with the communication, which was supplied to the undersigned workman and which report was supplied to the undersigned workman only a day before he was to appear before the Disciplinary Authority alongwith the written statement at the time of personal hearing on 22.3.1996"

The actual position is that the workman was supplied inquiry report alongwith the provisional order dated 7.3.1996. The allegation that inquiry report was not supplied alongwith provisional order is denied. Moreover, the hearing i.e. dated 22.3.96 one day before which the workman has claimed to have received the inquiry report is concocted date as there was no such hearing on that date. The hearing was held on 20.4.1996. On that day, the workman submitted a letter. That letter did not make any grievance regarding non supply of inquiry report or late supply thereof infact the letter challenged the findings of the Enquiry Officer which could not have been done without the receipt of the inquiry report. The said letter is Annexure R-1 to reply of the Management.

11. The workman has made an objection to the effect that the Bank had not notified the appointment of Disciplinary Authority and Enquiry Officer. The same is baseless, as the Bank vide Circular No. HRD: 1854:84 date 22.10.1984 had notified that the Officer in Senior Management Grade Scale IV would be the Disciplinary Authority in respect of employees of the Bank in Clerical and Subordinate staff cadre. In the instant case the Chargesheet and Order were issued by the Chief Manager who is an Executive in Senior Management Grade Scale IV. Therefore, the action of the Chief Manager as Disciplinary Authority in issuing the Chargesheet/Order in domestic inquiry and appointing the Presiding Officer is proper and valid.

12. It is submitted that the copy of the statement of witnesses Sh. Sunil Kumar Srivas, Mrs. Baddi and Mr. Prashant Kumar Jain which were annexures to Investigation Report and the said report was forwarded to the workman alongwith the Chargesheet dated 20.5.1995.

13. In the domestic inquiry which has Quasi Judicial procedure, enforcement of outside witness is often rendered difficult. The Management made all possible efforts to produce the two outside witnesses i.e. Sh. Sunil Kumar Srivas and Mr. Prashant Kumar Jain but were not successful in their efforts. The statements earlier recorded have not been disputed by the workman and were corroborated by the then Branch Manager Jabalpur. The statement of Smt. Baddi on the other hand was confirmed by her during the inquiry and marked as Exh. M-14.

14. The claim filed by the workman is denied in its totality and also the Affidavit by way of evidence is also denied. The allegation made by the workman that the Enquiry Officer was biased against the workman is wrong and denied. The workman in his claim referred to the stage of questioning by the Enquiry Officer. It is the settled position of law that where the workman has not got himself examined as a witness, the Enquiry Officer is right in questioning the workman at the incriminating circumstances appearing against him, which also provide yet another opportunity to the workman either to rebut or clarify the incriminating evidence appearing against him. Such a questioning by the Enquiry Officer cannot be alleged as illegal.

15. It is submitted that the charges established against the workman are serious, warranting punishment from services. There was no extenuating mitigating circumstances to take lenient view in order to interfere with the punishment imposed on the workman.

16. It is submitted that preliminary inquiry was valid, proper and preliminary issue be decided in favour of the Management.

Written Argument of workman is as follows:—

1. That the workman while working as clerk in Faridabad Branch of the Corporation Bank was issued with a charge sheet dated 20.5.1995 alleging that with the malafide intention, in collusion with Sh. Sunil Kumar Srivas manipulated the opening of Saving Bank Account as 3383 in the name of Shri Badri Prasad Srivas to facilitate encashment of the said cheque and attempted to defraud the Bank. Although the charge sheet dated 20.05.1995 provided for filing reply to the said charges, yet since the management had already made up and exhibited its mind to proceed with the inquiry without waiting the reply of the workman to the charges alleged, as such, calling for reply to the charge sheet was sham and mere formality.

2. That before issuing the charge sheet the workman was neither associated with any preliminary Enquiry/ Investigation nor communicated that proceedings the issuing of charge sheet some investigations have been made an during such investigation, the investigating officer has recorded the statement of same individual or some documents in criminating the workman have been collected by such investigation office on whose report the charge sheet appears to have been based.

3. That although the charge sheet contains the names of five persons as witnesses of the management, yet the management closed their evidence by examining three witnesses namely Sh. G.Prabhakar Nayak, Capt. V.K. Wadhwa (both officers of the bank) and one Smt. Baddi by dropping Sh. Sunil Kumar Srivas and Sh. Prashant Kumar Jain. It is further relevant to submit here that in the present case Sh. Sunil Kumar Srivas and Sh. Prasant Kumar Jain were only the key witnesses for establishing the charges leveled against the workman but same were not produced before the enquiry officer, which is illegal in the eyes of principle laid down by Supreme Court in the case of Brielly Electric Supply Co. Ltd., Versus Workman 1971(2) SCC 617 has held as follows:-

   "No material can be relied upon to established a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used."

4. It is further relevant to mention here that, it is well settle principle of law that failure to examine single witness on whose testimony entire case rests, vitiates whole enquiry as laid down in the case of P.N. Mukherjee versus Union of India reported in 225 Swamy's case law digest 1993 page No. 346 and in the present case the main witnesses Sh. Sunil Kumar Srivas and Sh. Prashant Kumar Jain who could testify to the effect that the workman played any role to opening of the account.

5. That it is important to submit that the workman was not supplied the copy of the Enquiry officer report before passing the provisional orders of the disciplinary authority dated 7.3.1996 as well as along with the provisional order dated 7.3.1996 and non-supplying the Enquiry officer report before passing the final order is illegal in the eyes of law.

6. That it is relevant to submit here that the disciplinary authority as well as appellate authority not applied their mind before the passing the orders and they reproduced the observation of Enquiry Officer in their order, which are not speaking orders and therefore same are liable to be quashed.

7. That it is submitted that the disciplinary authority passed the impugned dismissal order on the basis of past record, which was not part of the charge sheet and which was not produced before the Enquiry Officer and therefore the impugned order of dismissal is illegal.

8. That both impugned orders dated 7.3.1996 passed by the purported disciplinary authority and the order dated 6.9.96 passed by the purported appellate authority are illegal, wrong, against the principle of natural justice, fair play and equity hence void and in operative, inter-alia on the following grounds:-

   (a) that the whole enquiry proceeding are rendered void as being conducted by a person who was not a validity appointed enquiry officer in terms of para 19.14 of bipartite settlement as the name of the enquiry officer for Faridabad Branch, of the bank as well as the name of the disciplinary authority for the that purpose was never notified or circulated either on the notice board of the branch, or to the staff of the branch. In view of the statutory infirmity the whole enquiry proceeding are rendered void and any punishment proceeding from such proceeding is rendered nugatory and non-established.

   (b) That the enquiry officer was baised, interested and heavily leaning in favour of the management acting as other agent is obvious from the proceeding of enquiry itself. He was acting both as prosecutor and judge at the same time, is apparent from his malicious action of subjecting the workman to cross-examine him even before the workman entered his defence and appeared as his on witness. This was purposefully done by the biased and interested enquiry officer in order to prejudice the defence of the workman.

   (c) The enquiry officer in this report mentioned "The crucial aspects to be determined would be whether the C.S.O. knew the identity of

Sunil Kumar Srivas..." This crucial aspect has been determined by the Enquiry Officer with conclusion that since no other official of the bank know the identity of Sunil Kumar Srivas, as such it is only the undersigned-workman who know the identity of Sh. Sunil Kumar Srivas. This conclusion of the Enquiry Officer is a legal affront.

(d) The Enquiry Officer in order to infuse the life in otherwise dead case of the bank has biased his conclusions against the documentary evidence on the record. Regarding the entering of draft by workman and allotting the SB Account No. this approach on the part of the Enquiry Officer is legally unwarranted.

(e) With prejudice to what has been submitted above, it is earnestly submitted that the punishment inflicted on the undersigned is disproportionate to the charge alleged. The undersigned workman has throughout performing his duties with devotion and has earned the laurels in the shape of certificate from the bank for mobilizing the deposit for the bank. This single lapse even if it is so assumed should not terminate the career of the workman.

(f) It is therefore, prayed that the order dated 7.5.1996 passed by the disciplinary authority and order dated 6.9.96 passed by the appellate authority may be declared illegal, wrongful and against principles of natural justice, fair play and equity by re-instating the workman to his post of typist-cum-clerk with benefit of full back wage continuity of service and attendant benefits.

Issue No.1. was heard and decided by me as preliminary issue on the basis of evidence of the parties.

Which was decided on 9/12/2013 against workman and in favour of management and domestic enquiry report dated 16.1.1996 submitted by Sh. S.V.S Dattatreya enquiry officer was found just, proper and legal. On the basis of enquiry report disciplinary authority awarded punishment of dismissal to workman Sh. Rajender Kumar Mawal. On 7/5/1996 which was confirmed by appellate authority on 6/9/1996. Thereafter this tribunal fixed 16.12.2013 for argument on the point of proportionality of punishment.

But Ld A/R for the workman vehemently argued on 21.1.2014 that workman has never been punished in his whole service carrier except the instant case. That punishment imposed on workman in the instant case is excessive and harsh so liable to be modified to stoppage of few increments on the basis of principle laid down in the following ruling and order of O.A. No. 3660/2012 decided on 31.10.2013 by principal bench of Central Administrative Tribunal.

1. Chandra Vilash Rai V/s State of Bihar and others (2003) 11 Supreme Court Cases 741

While on the otherhand Ld A/R for the management on 12.3.2014 replied that punishment imposed on workman is just, proper and legal in the instant case as the workman with Ulterior Motive enchased the banker's cheque of Rs. 2 Lacs prompted and assisted by Sh. Sunil Kumar Srivas to open a Saving Bank Account in the name of the payee of the cheque, allotted SBI Account No. 3383 thereto without placing the relevant documents before the branch officials for verification, and authorization to open the Account and accepted cheque for Rs. 2 Lacs to the credit of the said Account. The said actions were tentamount to doing acts prejudicial to the interest of the bank which is gross misconduct.

As well as appeal filed by workman against his punishment has also been dismissed on merits by appellate authority on 6/9/1996. Principle laid down in cited ruling on behalf of workman is inapplicable due to distinguishable facts.

So workman deserves no sympathy on the point of punishment. Hence his punishment is not liable to be modified.

In the light of contention and counter contention I perused the pleading of the parties , their evidence on record, written arguments as well as principal laid down in cited ruling and settled law on the point and provision of Section 11 A Industrial Dispute Act and case law based on this section.

Although ruling cited on behalf of workman is inapplicable due to distinguishable facts.

But perusal of record shows that in the instant case punishment of dismissal has been awarded to workman which is in itself maximum punishment. So, penalty is extreme and harsh.

It is also relevant to mention here that in case of dismissal person dismissed becomes disentitled to almost all pecuniary service benefits.

Which not only affects to dismissed person but materially and financially affects the family members of the dismissed person. Admittedly workman is not previous convict so punishment of dismissal of workman is liable to be modified.

On the basis of aforesaid discussion I am of considered view that punishment of dismissal of workman Sh. Rajender Kumar Mawal is liable to be modified to punishment of discharge (removal). Which is accordingly modified.

Reference is accordingly decided. Award is accordingly passed.

Dated:-25.3.2014

HARBANSH KUMAR SAXENA, Presiding Officer

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.